

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 22nd March, 2016

The House met at 2.30 p.m.

[The Speaker (Hon. Muturi) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

AMENDMENTS TO BILLS AT COMMITTEE STAGE

(Several Hon. Members walked into the Chamber)

Hon. Speaker: Hon. Members coming in, take your seats.

Hon. Members, this Communication relates to amendments to Bills at Committee Stage as I promised last week.

In the recent past, a trend has developed where Members submit amendments to Bills just before the House moves to Committee Stage. In some instances, this has introduced new perspectives to the Bills thereby opening up debate. Indeed, I have had complaints from some Members who have felt that the House is being ambushed with new amendments to Bills and for which a decision is required.

The Clerk's Office has also received complaints from the officers who sit in the Committee where they have advised against such moves. We have had to delay consideration of some Bills as Members file their proposed amendments late, a case in point being the Community Land Bill that is pending before the House. It is, therefore, imperative that this process be aligned with our own Standing Orders.

Standing Order No.133 guides the procedure in Committee of the whole House on a Bill. In particular, paragraph (2) states:

“No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, unless written notification of the amendment shall have been given to the Clerk twenty-four hours before the commencement of the sitting at which that part of the Bill is considered in Committee”

Hon. Members, going forward and for the good order during the Committee of the whole House, the following guidelines will be strictly adhered to:-

1. All proposed amendments to Bills should be submitted at least 24 hours before commencement of consideration of that specific Bill as per the Standing Orders.

2. Amendments for which no notice has been given will not be allowed or circulated except as approved by the Speaker prior to the consideration of the Bill in the Committee of the whole House.
3. Debate shall not be reopened during Committee Stage save for two or three Members speaking only for or against the proposed specific clause and/or proposed amendments thereto before the Chair puts the Question.
All debate is, therefore, encouraged to take place during the Second Reading of any Bill.
4. The provisions of Standing Order No.133 will be observed in totality to the extent stated above.

I thank you.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday, 22nd March 2016:-

The Report of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2015 and the certificate therein:-

- 1) The Kenya Institute of Special Education;
- 2) The National Industrial Training Authority;
- 3) The Higher Education Loans Board;
- 4) The National AIDS Control Council;
- 5) The Government Press Fund;
- 6) The State Department of Interior Revenue Statement;
- 7) The Kenya Maritime Authority;
- 8) The Kenya Energy Sector Environment and Special Responsibility Programme Fund;
- 9) The Kenya Film Commission; and,
- 10) The Insurance Regulatory Authority.

The Report of the Auditor-General on the Financial Statements of Kenya Roads Board (operations) and the Kenya Roads Board Fund for the year ended 30th June 2015 and the Certificate therein.

Thank you.

(Hon. A.B. Duale laid the documents on the Table)

Hon. Speaker: The Chairman of the Chairpersons' Panel, Hon. Cheboi, will be allowed to table the Report of the Liaison Committee on the Division of Revenue Bill in the course of business.

Next Order.

STATEMENTS

LOSS OF LIVES ALONG MERU-NAIROBI HIGHWAY

Hon. Speaker: Member for Chuka/Igambang'ombe.

Hon. Njuki: Thank you, Hon. Speaker. I had an issue of national concern that I had asked for your intervention. Under Standing Order No. 209, the Committee on Implementation has a role to ensure that the resolutions made in this House including those of Petitions are adhered to. In June last year, the Departmental Committee on Transport, Public Works and Housing took my Petition and got a very good response from the Cabinet Secretary (CS) in charge. The response was that the CS in charge of Transport and Infrastructure would erect standard speed bumps at the location to enhance road safety and this would be captured in the Budget for 2015/2016. The issue came to the House and it was agreed that the Committee on Implementation would follow it up to ensure this is done.

I am asking for your ruling because after talking to the Chairlady of the Committee on Implementation--- Sometimes it is very difficult when things have been agreed upon and the CS in charge assures you, but later things are not done. Yesterday, the Meru-Nairobi Highway was closed for nearly six hours. Before I brought this Petition to the House, we had lost six lives and yesterday we lost another life of an old woman. Worst of all was that I was called by the Criminal Investigation Department (CID) and put to task. They believed I am inciting the community to block the road because I had brought the matter to the House and I was promised that the bumps would be erected. They were erecting barricades with the belief that it is a matter that should have been dealt with.

In this case, I am seeking your indulgence to know what could be done in such circumstances. Are we supposed to go to the Ministry, negotiate and beg or is it another opening for corruption because I do not know what I am supposed to do to the engineers or the CS for the bumps to be erected? I am talking about Kangoro Bus Stage between Chuka Town and Kathageri which is a black spot yet we have many bumps on that road and it is not going to be a unique feature. I seek your indulgence.

Hon. Speaker: I can see the Chairlady of the Committee on Implementation is seated next to you, Hon. (Ms.) Soipan.

Hon. (Ms.) Tuya: Thank you, Hon. Speaker. Please allow me to say this and it is also to the attention of all Members. It is not fair for Members to keep on belabouring and complaining about issues out of ignorance. It is less than a month ago when I tabled a Report of the Committee and if every Member would take an initiative to go to the relevant offices of Parliament to find out the status of their various resolutions, we would save time from unnecessary interventions and complaints. If Members read that Report they would find out how far their resolutions are in terms of implementation or even revert back to the Committee if they cannot retrieve the House reports.

Hon. Speaker, again for the attention of the Members, I did not complete the Report I tabled before the House and we are still pursuing it through the Office of the Clerk and your Office for prioritisation so that I can lay it before this House for debate. Members will know the status of implementation of these various resolutions.

I would like to urge Hon. Njuki to go and retrieve House records and he will find out the status of implementation of his resolution and that also applies to Hon. Wamalwa and everybody else. They make unnecessary complaints. In every resolution of this House, when we call the various CSs to interrogate them on how far they are going with implementation, we call these Members including Hon. Wamalwa. He knows the extent of implementation of his resolution. I would like to urge Members to support the Committee. Our Committee has a full in-tray. The Office of the Clerk should help the Committee in operationalising the online tracking tool which

is not there. The tool which is there tracks other businesses of the House but not the extent of implementation. We have put in a lot of resources sitting with experts and Information and Technology (IT) gurus to come up with a plan on how to operationalise it but it has not been done. The last time we heard from the Office of the Clerk was that there was a budget of Kshs300,000 which was supposed to operationalise it. That should be done so that each Member of this House, and members of the public because this is also for the consumption of Kenyans, can with a click of a button find out the extent of implementation of particular issues. I only ask for cooperation of Members.

I would like to urge Hon. Njuki to go to the Table Office, pull out the Report of the Committee and he will find out the extent of implementation of his recommendation.

Hon. Speaker: I can see people who have not bothered to understand their Standing Orders. If you make it a debate, there is no Motion. Hon. Njuki, you can only speak with the sympathy of the Speaker and you must look miserable to attract the sympathy of the Speaker. Hon. (Ms.) Soipan raised that issue when she gave a status update of what the Committee is doing and it is only fair that we ask the administration to take up the suggestion that has come from her Committee to enable Members and other Kenyans to track implementation of various resolutions. She has made a fair request. Hon. Muthomi Njuki raised the issue of loss of lives along Meru-Nairobi Highway.

Hon. Njuki: Thank you, Hon. Speaker. I am seated between two ladies who are both victims. Hon. (Ms.) Kajuju used the Meru-Nairobi Road yesterday and she almost went back to use the Nanyuki route. I would like to clarify my concern. I think the lovely lady on my right did not understand what I meant in my---

(Loud consultations)

The lovely Member of Parliament of Narok County.

Hon. Speaker: Hon. Njuki, what are you saying? Can you withdraw and apologise for calling her “lovely”? She is a gracious lady.

(Hon. Shill consulted loudly)

Hon. Shill, you are out of order. You cannot shout.

Hon. Muthomi, can you withdraw that word? The term is “Gracious lady, Hon. Roselinda Soipan Tuya.”

Hon. Njuki: Hon. Speaker, if referring to Member of Parliament for Narok County as lovely is a sin or un-parliamentary, I kindly withdraw.

(Loud consultations)

Hon. Speaker: It is un-parliamentary.

Hon. Njuki: I withdraw and apologise to her and refer to her as Member of Parliament for Narok County.

Hon. (Ms.) S. W. Chege: The member should withdraw.

Hon. Speaker: Because Hon. Sabina Chege is not listening to what you are saying, she is still insisting that you should withdraw and you have already withdrawn. This is the problem of not listening.

Hon. (Ms.) S.W. Chege: No!

Hon. Speaker: What are you saying “no” to? You cannot say “no”. He has withdrawn the word. Proceed for one minute.

Hon. Njuki: Hon. Speaker, having withdrawn my statement, I want to clarify that the Departmental Committee on Transport, Public Works and Housing did its job. The Committee on Implementation has equally done its job. That is why I have with me the record of what was recommended and the implementation status. However, my complaint was on whether they have teeth to bite. The recommendation was done. They have even engaged me in the fact that they will erect the said bumps but it is not done. Where are we supposed to go?

Hon. Speaker: You are supposed to raise a complaint with the Committee on Implementation so that they can summon the relevant Government agency.

Hon. Njuki: Hon. Speaker, I want to be on record that I have raised the same complaint, it was deliberated upon and up to today nothing has happened. It is not my mistake that a road can be closed for six hours. It is also very unconstitutional and unfriendly for the Criminal Investigation Department (CID) to go after me accusing me **of inciting people to block the road. So, I seek your indulgence to ensure that the Kangoro bumps are done** so that we can have that issue put to rest.

Hon. Speaker: Hon. Khatib Mwashetani.

Hon. Mwashetani: Thank you, Hon. Speaker. I just want to request for clarification on the way I was de-whipped from---

(Hon. Shill and Hon. A. B. Duale consulted loudly)

Hon. Speaker: Hon. Bare Shill and the Leader of the Majority Party, you are causing disorder in the House.

Hon. Mwashetani: Hon. Speaker, I want to get a clarification from your office on the way I was de-whipped from a Departmental Committee. The Standing Orders that guide us in any activities that we do in Parliament are very clear. Standing Order No. 176 on the discharge of a member from a committee is very clear. Standing Order No. 176 (1) says:

“The parliamentary party that nominated a member to a select committee may give notice, in writing, to the Speaker that the member is to be discharged from a select committee.”

It is not talking about any coalition. However, the Communication that was done to your office was from the Coalition for Reforms and Democracy (CORD). I have consulted with my fellow colleagues in FORD (K) and there was no communication which was done through the party. So, I was de-whipped un-procedurally and I would like to get a clarification from your office. Standing Order No. 19 talks about how we elect the leadership in the House – the Leader of the Majority Party and Deputy Leader of the Majority Party. Here, they have specified. They have given an option. It is either you choose the party or the coalition. However, in the Committee, they did not give an option. So, I feel that the procedures that were followed for me to be de-whipped were not proper.

Hon. Speaker: He was on a point of order. It is a matter that needs to be addressed. Standing Order No. 176 actually talks about a “political party” while the other one talks about “party or coalition of parties.” There is need for our rules to be clear. Sometimes, they say you might visit some wrath on yourself because I can see you are seated next to the Deputy Minority Whip who, I believe, is a member of FORD (K).

Hon. Member: On a point of order, Hon. Speaker.

Hon. Speaker: There is nothing out of order. You want to debate a non-issue. This is an administrative matter. This matter will be looked at by the House Business Committee as it sits this evening at the rise of the House. What Hon. Mwashetani is raising is a substantive matter that needs to be addressed.

Hon. Shill: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Members, there cannot be a point of order. Hon. Bare Shill is out of order. Hon. Sakaja.

Hon. Sakaja: Hon. Speaker, while the provision in the Standing Order is very clear, CORD needs to confirm whether or not they are still within a coalition. This is because we have seen FORD (K) members being persecuted heavily. When Senator Mong’are, a FORD (K) member, won a Committee Chair position in the Senate, he was de-whipped by the Orange Democratic Party (ODM). Hon. Mwashetani, a member of FORD (K), has been de-whipped by ODM. Even when the FORD (K) party leader wants to launch his presidential campaign, he is stopped by the Deputy Party Leader of ODM. Can they confirm if, indeed, they are still together as a coalition or they are no longer together? We saw the Deputy Party Leader of ODM, Hon. Wycliffe Oparanya, blocking the FORD(K) Party Leader from launching his presidential bid.

Hon. Speaker, for the sake of parliamentary proceedings, we need to understand if they are still operating as a coalition or as separate parties that are just sitting on the same side. It is no longer clear.

Hon. Member: On a point of order, Hon. Speaker.

Hon. Speaker: Nothing is out of order there. Let me allow Hon. Chris Wamalwa.

Hon. Wakhungu: Thank you, Hon. Speaker. I confirm that CORD is very strong. FORD (K) is not being persecuted by anyone. We are here because of the agreement we have. As a coalition, we will look at the matter of de-whipping and get a way forward. We are not persecuted. This is a coalition which is a government-in-waiting. The launch of the presidential bid of Senator Moses Masika Wetang’ula will be there in Kakamega. There is nothing Governor Oparanya can do.

Hon. Speaker: Hon. Wamalwa, you want to address us on village non-issues. Hon. Shill, what is your point of order?

Hon. Shill: Thank you, Hon. Speaker. This issue of de-whipping members from Committees needs a very sober decision. This is because Members of Parliament in a democratic space must be free to give their wisdom and whatever they feel is right. It is very bad for them to be checked to the extent that they have to look back before saying what they want to say. We are going towards elections. Members must be left free to exercise their democratic rights.

Hon. Speaker: What is your point of order?

Hon. Shill: My point of order is that we request you to make a decision on this sooner than later.

Hon. Speaker: Make a decision on what? It is never in my purview to whip or de-whip anybody. Let us hear Hon. Mbadi. He seems to be burning with something.

Hon. Ng'ongo: Thank you, Hon. Speaker. I could see you are struggling to get the point of order raised by Hon. Bare Shill who was given an opportunity to chair a party which was dying. I think that is why he was given to chair.

I have two points of order. The first one relates to the issue canvassed by the chair of TNA Party which is almost dead or resurrecting. He spoke about the ODM de-whipping Hon. Mong'are in the Senate. That is misrepresentation. As a matter of fact, the information I have is that the communication was from the Minority Whip at the Senate who is Sen. Muthama. I do not know when Hon. Muthama ever became a member of the ODM, maybe so many years before.

Hon. Speaker: Are you discussing matters which were in the Senate?

Hon. Ng'ongo: No. The chair of TNA raised it and I wanted to correct him. I know what he wants to do is create problems in CORD. He has enough problems in the Jubilee Coalition.

Hon. Speaker: Hon. John Mbadi and all others, the issue raised by Hon. Mwashetani is one touching on Standing Order No.176 and Standing Order No.19.

Hon. Ng'ongo: Can I now address that Hon.Speaker?

Hon. Speaker: Just address that. Those other issues you can deal with them outside there in the usual way.

Hon. Ng'ongo: Thank you. I will restrict myself to the issue raised by Hon. Mwashetani. I just brought this because my opposite number brought the matter.

On the issue raised by Hon. Mwashetani, I think we have to be very clear. Yes FORD (K), ODM and Wiper Democratic Movement are parties but we formed a coalition that is recognized in law called the CORD Coalition. As a matter of fact, the House leadership we have is CORD leadership. Even communicating appointments to Committees and de-whipping of Members is done through the House leadership and that is the Whip of the Minority Party. The Whip of the Minority party happens to be Hon. Mwadeghu who is a member of the ODM deputized and ably so by Member for Parliament, Kiminini, Hon. Wamalwa who is a member of FORD (K). Therefore what Hon. Mwashetani is bringing forward is a side show. He has only one option: To behave well within his political party, convince us that he still belongs and--- I am saying that in my view, what Hon. Mwashetani needs to do is very simple.

(Loud consultations)

Hon. Speaker: Hon. Members, I cannot hear what the Honourable Member is saying.

Hon. Ng'ongo: I do not know why they are being agitated for no reason.

(Hon. (Dr.) Pukose consulted loudly)

Hon. Speaker: Hon. Pukose, surely---

Hon. Ng'ongo: Hon. Mwashetani is a very good friend of mine. Recently you saw me advising him on camera. I hope he will take my advice. He needs just to behave well within the coalition, be loyal, support the policies of the party that brought him here and forget about being misled by the Jubilee Coalition. They misled him in Malindi and he made a wrong decision. Now they continue to mislead him and he is an individual. By the way, elections are next year. You know Hon. Mwashetani is serving his first term. I am really sympathetic to him. I wish he was

like Hon. Mbadi who has a pension. He needs to be careful otherwise he will be a former Member of Parliament very soon.

Thank you.

Hon. Speaker: Hon members, what has happened in this House, sometimes even very serious issues are reduced to very ordinary stuff. It is fair that you should look at the issues raised by Hon. Mwashetani. He raises a very substantive matter that perhaps listening to you, it is not possible for one to think that they can get assistance because you want to play politics instead of addressing the issue. It is not even a matter that should actually be exercising so many of us. Let us only address Standing Order No.19 and what he raises as the contradiction because there appears to be, according to him, a contradiction relative to what is provided for in Standing Order No.176. That is the point I needed to be addressed.

Hon. Kamau.

(Hon. Wandayi consulted loudly)

Hon. Kamau: Thank you very much, Hon. Speaker. The issue raised by Hon. Mwashetani is very weighty. Indeed, I want us to speak from the legal perspective. Indeed, if that is exactly what happened, that the letter that communicated his de-whipping came from the coalition and not from his political party, I would want to ask you kindly to look at that issue and issue a ruling. As far as I am concerned, that decision is *ultra vires* under Standing Order No.76 and therefore null and void.

It does not help at all if we come here as Members of Parliament and try to intimidate our colleagues. This is a House of procedures and rules and we should not allow Members to be intimidated in their own turf. That is wrong.

Secondly and I wish this can be heard clearly by Members, it is also in the purview of this House to make Standing Orders and review them accordingly when time comes. I would want to urge Members especially those who are really affected by these de-whippings to move immediately and come up with amendments to the relevant sections of the Standing Orders so that they are protected appropriately in this House.

Thank you.

Hon. Speaker: Let me hear Hon. Peter Kaluma.

Hon. Kaluma: Thank you, Hon. Speaker. The matter being raised by my brother Hon. Mwashetani is very simple. The answer to this matter arises and lies in Article 1 of the Constitution which clearly states that Kenya is a multi-party democracy. That is the underpinning. Under the Constitution the choices a Member has to reach this House are two: You are either coming through a political party or an independent candidate. When you come as an independent candidate, you enjoy the discretion and grace of the Speaker in terms of your being in the Committee. There is nothing any other Member can do about it. But really if you come through a political party, it will be upon the party to determine in what Committee you can serve the nation as you serve the interests of that party best. There is a way in which you have to deal with it.

Secondly, we must recognise that under that Constitution and under our other laws made by this Parliament, we recognise parties operating as parties and parties operating as coalitions. Coalitions made either pre-election time or post election time are recognised. This is something we are agonising about in the Elections (Amendment) Bill. How do we facilitate parties to merge

without dissolving them? This is one of the issues we are dealing with. When you merge or when you operate under a coalition, it does not automatically mean that you are merged. You maintain your identities as individual parties but you say that you will be subservient to the general interest of the coalition on some issues. You remember when we came to this Parliament, the allocation of slots for representation in Committees was apportioned between coalitions. It was upon the coalitions within the party agreement to decide how Members are put therein. I do not find any contradiction. The interests of the party are subordinated to the coalition. If it were about a letter coming from a party or an individual from a party within a coalition like the case of Hon. Mwashetani, it is not helping because it is just the same manner it was easy for somebody associated with another party in the CORD Coalition to issue the letter. The same way in ODM, if Hon. Mwashetani wants to issue the letter, it will be issued. Let us encourage party discipline and serving the nation within the context of the aspirations of the party.

There is a reason for this. Personally, I believe it will be very dishonest of me to come to Parliament as a Member through ODM then forget what ODM feels about national issues here. It cannot work that way. We must operate within the confines of our parties even as we carry forth the non-national interests under our charge in the National Assembly.

Thank you. I request my brother to behave well. We will return him to the Committee. He really campaigned against us.

(Loud consultations)

Hon. A.B. Duale: Thank you, Hon. Speaker. The matter before us is about Standing Orders. Unless we amend Standing Order No.176, it is very sad. We have a senior Member of FORD (K) in the House; the Deputy Minority Whip, none other than Hon. Chris Wamalwa, a senior ranking Member of that party. This Standing Order says - I want to read it for everybody –

“The parliamentary party that nominated a member to a select committee may give notice, in writing, to the Speaker that the member is to be discharged from a select committee.” This matter is as clear as the day is from the night. If he has not received a letter from FORD (K), then in the opinion and the interpretation of this Standing Order, Hon. Mwashetani cannot be de-whipped. It is as clear as that.

We must enrich democracy. On our side, we have the most rebellious Members. We have never de-whipped them. They went and campaigned for KANU. We told them that it was their right. The problem we have and need to address and I agree with Hon. Jamleck, is to ultimately amend the Standing Orders.

Under the Constitution, we have three fundamental functions: to oversee, represent and legislate. Oversight falls within Committees. When you deny a Member of this House, whether he is Hon. Ken Obura, Hon. Duale, Hon. Keter or Hon. Mwashetani you deny him that chance. I am speaking because I was a victim of this circumstance in the last Parliament. I must speak for the voiceless. We cannot have the cake and eat it. We cannot claim to be a democratic party and at the same time--- I come from a region where the big boys do not exit. Just because Hon. Kaluma or Hon. Mbadi come from an area which is enclaved that you cannot breathe and move, you cannot transfer that brand of politics to the rest of Kenya. That must be denied. Kenya must be one and democracy must exist. There is no democracy. Why am I saying so? In 2009, I was a ranking and founding member of ODM and I said it in a parliamentary group meeting attended by among others Hon. Mbadi. I come from the North, the desert where I enjoy a lot of freedom.

I do not want to join a party where there is no freedom. That is why I ended up forming URP then came to Jubilee. We have a lot of freedom among our membership.

(Applause)

Let us not take Kenya to the dark days. Make an interpretation on Standing Order No.176. If you have not received any letter and Hon. Chris Wamalwa as a ranking Member of FORD (K) --- I heard the party leader of FORD (K), a man I respect, today is being denied a venue in Muliro Gardens. The Luyha nation must wake up. How can you stop your son from holding a meeting? How? How can you stop your own son from holding a *Kamkunji*? Moses Wentangula has been stopped from holding a *kamkunji* in Muliro Gardens! That is not allowed. It is very shameful. If you have not received a letter from FORD(K), unless and until these Standing Orders are changed, Hon. Mwashetani remains a Member of these Committees.

Thank you, Hon. Speaker.

Hon. Chepkong'a: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Chepkong'a, what is your point of order on this matter?

Hon. Chepkong'a: Thank you, Hon. Speaker. I rise pursuant to Standing Order No. 83. As you know, I have a proposal to amend these Standing Orders. The proposal is supported by more than 50 Members of Parliament but it has been pending for the last six months. I have not received any response despite our Standing Orders being very clear that the matter must have been considered by the House Rules Committee within 30 days. I am aware that the Committee was given an extension of another 30 days. I believe that period also lapsed. I need your direction so that this amendment can be brought to the House because it was supported by more than 50 Members, as required by our Standing Orders.

I also rise not to support Hon. Khatib Mwashetani, but to say that we must defend the Constitution. Let me read what it states in Article 124(1):

“Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.”

The Standing Orders were to be made for the orderly conduct of meetings; not for discipline of Members. If there is a Standing Order that is inconsistent with the Constitution, it must be dealt with. Removing a Member from a committee as disciplinary action by a party does not fall within Article 124 of the Constitution. Such action is not for the orderly conduct of the proceedings of the Committee. Standing Order Nos. 19 and 176 are inconsistent with the Constitution.

Another thing is that, under Article 95 of the Constitution, every Member of Parliament is elected to represent a people. It is inconsistent with the Constitution when someone is removed from a committee. If you do so, you remove those people from the Committee. As Hon. Chepkong'a, I am nothing. I was elected by the electorates of Ainabkoi Constituency to represent them in this House. They are Kenyans. You cannot remove them from committees. It is like you have barred the entire Lungalunga Constituency from participating in the business of this House. It is inconceivable that it was the intention of Kenyans – in providing for making of Standing Orders by this House – that the people of Lungalunga Constituency should be disciplined because of errors made by their Member of Parliament. That cannot be true.

I like what a writer by the name Tim Hansel said: “Pain is inevitable but misery is optional.” You cannot allow the Member for Lungalunga to be miserable. That is why he stood. He is in pain, which is inevitable. He has not inflicted himself with pain. He cannot remain miserable because some people want him to be miserable.

Hon. Ng’ongo: *(Off-record)*

Hon. Chepkong’a: Hon. Speaker, I do not require Hon. Mbadi’s assistance on this matter. He should listen to me. I have a lot of respect to the Party Leader of FORD (K). I joined the legal profession while he was practising as M/s Wetangula & Ngamati Advocates. When I went to his law firm, he was gracious enough to allow me to be a pupil there but I had already been given another chance in another place. So, I did not participate there. I know him as a very decent man. He is not a witch-hunter. He does not seek bad things for people, otherwise Hon. Khatib Mwashetani would not have run on the party’s ticket. The Member is here as a second-term Member of Parliament. His election was nullified. He was re-elected by the people of Lungalunga. He is a second-term Member of Parliament like Hon. John Mbadi. Hon. John Mbadi must not---

Hon. Ng’ongo: *(Off-record)*

Hon. Chepkong’a: Hon. John Mbadi, I am a first-term but he is a second-term Member of Parliament.

Hon. Members: No!

Hon. Chepkong’a: I am telling you. You need to read the law. This is not accounts.

Hon. Speaker, I seek a ruling from you on the contradiction of Article 124 of the Constitution and Standing Order Nos. 19 and 176. It is not intended that a Member should be discharged from a committee for political purposes. That is not the law. This is my 26th year of legal practice. I qualify to be a Member of the Supreme Court, if I were to apply.

(Loud consultations)

Hon. Speaker, I am asking you who is more senior than me and I am sure you see well than I do. I am seeking your ruling on this matter. I can see that Hon. Mbalu is also in total agreement by virtue of association and residence.

Thank you, Hon. Speaker.

Hon. Speaker: Order, Hon. Members! You have ventilated on that issue sufficiently. We cannot make it the only business. Actually, it was never meant to be the business of this House.

Since what Hon. Khatib Mwashetani sought was on my ruling on the provisions of Standing Order No. 19 as read together with Standing Order No. 176, having been sufficiently addressed by Hon. Peter Kaluma and Hon. Chepkong’a, who brought in issues of oversight as provided for in Article 95 and the anchor of Standing Orders in Article 124 of the Constitution, allow me to go and make a ruling.

(Hon. Ng’ongo consulted loudly)

Hon. Mbadi, it is not that the House cannot move because you did not speak. I do not want any further debate on this matter. There is nothing to debate. If Hon. Khatib Mwashetani wanted your opinion, he would have sought it. But, he sought mine. If I say I do not require any assistance

that would be it. Even if I did not allow anybody to address me, I would still have to do a ruling. Just be content with that.

I had allowed Hon. Cheboi to table the Liaison Committee's Report on the Division of Revenue Bill.

Hon. Cheboi.

PAPER LAID

Hon. Cheboi: Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Liaison Committee on its consideration of the Division of Revenue Bill 2016

Thank you, Hon. Speaker.

Hon. Speaker: Again, I encourage Members to go and read the Report of the Committee. Those who may not have read the Division of Revenue Bill may require the guidance contained in the Report of the Liaison Committee.

Hon. Members, before we proceed, allow me to recognise students from the following institutions, who are in Parliament: Matiku High School, Kibwezi West Constituency of Makeni County; Kariobangi Adventist Education Centre, Starehe Constituency of Nairobi County; Kiriani Secondary School, Nithi Constituency of Tharaka-Nithi County, and Mwenda Andu Secondary School, Kinangop Constituency of Nyandarua County.

They are welcome to observe the proceedings of the National Assembly.

(Applause)

Hon. Speaker: Hon. Members, I wish to draw your attention to the existence of the Supplementary Order Paper and also make corrections before we go to the next order.

The business appearing as No. 8 on the Supplementary Order Paper should read "The Constitution of Kenya (Amendment No. 4) not (No. 6), National Assembly Bill, No. 38 of 2015 and not No. 65". Make those corrections that the Bill is No. 4 and it is No. 38 of 2015.

Hon. Members, there have been many Bills under the hand of the Hon. Leader of the Majority Party. They have since been christened "Duale 1" "Duale 2" and "Duale 3". So, this is one of them but the correct number is "4" which is the published Bill. It bears the date of publication as 24th July 2015. I am sure the Hon. Leader of the Majority Party in moving will explain in greater detail. This Bill is one of those meant to implement the Constitution to provide for not more than two-thirds of either gender to be represented in elective positions. I am sure the Hon. Leader of the Majority Party will be explaining. I believe several of you have read this Bill. It is a small Bill and not complicated. Nevertheless, it requires your serious input and obviously you have to vote on it.

However, let there be no acrimony on this. Remember, to move from one stage to another you will need not less than two-thirds of all of you voting in support. So, please I urge that we debate it without much acrimony.

Next Order.

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

Hon. A.B. Duale: Hon. Speaker, I beg to move that the Constitution of Kenya (Amendment) (No. 4) (National Assembly Bill No. 38 of 2015) be read a Second Time.

The principal object of this Bill is to amend the Constitution to ensure that the membership of the National Assembly and the Senate conforms to the two-thirds gender principle as provided for in Article 81(b) of the Constitution.

There are a number of constitutional amendment Bills called “Duale 1” “Duale 2” and “Duale 3”. I have decided to be the Mover of this Bill primarily because I am the Hon. Leader of the Majority Party and I must take the lead in ensuring that the women of Kenya achieve their rights within the Constitution.

Secondly, I have five sons and looking for a daughter. So, I decided to support all the women and daughters of this country. Finally, apart from the Almighty God, my mother played a big role and I am under obligation to pay her back.

Having said that, Kenya is a signatory to a number of international, regional and sub-regional instruments. To highlight about four of them, Kenya is a signatory to the Universal Declaration of Human Rights (UDHR), the Beijing Declaration and Platform for Action (BDPA) and it has signed the Protocol to the African Charter on Human and People’s rights on the rights of women in Africa which is called the Maputo Protocol. In line with the Constitution of Kenya 2010 which domesticated these instruments to safeguard human rights and the rights of women and fundamental freedoms, Article 81(b) of the Constitution states:-

“Not more than two-thirds of the members of elective public bodies shall be of the same gender”

Article 27(8) requires the State to undertake legislative and other measures to implement the principle that not more than two-thirds of the members of any elective public bodies shall be of the same gender. This was a serious matter prior to the 2013 General Election. It was to create an election crisis. To avert that crisis, the Attorney General (AG) on behalf of the Government of Kenya then sought an advisory opinion from the Supreme Court on 8th October 2014, on whether the enforcement of the two-thirds gender principle can be attained. Can the election take place? If not will the 11th Parliament and Senate be constitutionally constituted?

So, a number of issues were argued in the Supreme Court. The Supreme Court made an advisory opinion and ruling. It directed that this can be realised progressively but further directed Parliament and more so the National Assembly because this is where the Bill has begun, to enact legislation to give effect to the two-thirds gender rule by August 2015. By the year 2015, this was not achievable and I am sure within the reading of Article 118(1)(b) and Article 261(2) this House decided to extend that deadline to 27th August, 2016. In principle we have got five months to either deal with this critical matter in the interest of the country and that of the women of Kenya.

What are the numbers now? Women participation in 2013 General Election remained very low with only 63 women being elected to the National Assembly and 23 nominated on various affirmative action provisions in both the National Assembly and the Senate. So, we have 26 gracious Hon. female Members of Parliament in National Assembly and 23 who are nominated on the affirmative platform in both Houses.

The outcome of this process was the Constitution of Kenya (Amendment) Bill. Several taskforces were set up. Meetings and dinners were held by the women caucus and the other players and this led to the outcome of the Bill before us this afternoon, which is the Constitution of Kenya (Amendment) (No. 4) Bill (National Assembly Bill No. 38 of 2015) which was read on 30th July, 2015 noting that public participation and the 90 days deadline for constitutional Bills has now matured.

What are the arguments before I go to the specifics of the Bill? This Bill is gender neutral. The perception out there is that we are legislating to comply with the two-thirds gender principle for women. Thirty to 40 years from now, there might be more women than men sitting in this House. The male gender might be the minority. What we have started this afternoon might also save the male gender. Let us not look at this Bill as a women affair.

I also want to make it very clear that this Bill does not require a referendum. Some people argue that it will be expensive to implement this Bill once passed into law because the number of Members of Parliament will increase. Democracy and governance is very expensive everywhere in the world. There is no price tag on leadership, governance and on the route to achieving democratic ideals. This Bill protects the gains of women in the Constitution. The provisions of this Bill have been tested in the county assemblies.

Hon. Speaker, Clause 1 of the Bill is the Short Title. As you said, it is a small Bill with a short title. Clause 2 provides for the way the various items should be applied during the general election.

Clauses 4 and 5 are very important because they seek to amend Articles 97 and 98 of the Constitution to ensure that both Houses of Parliament comply with the two-thirds gender principle by allocating special seats proportional to the number of seats won by each political party. A determination as to how many special seats go to which party should be done after the general election. This Bill has also created a sunset clause of 20 years in the amendment with the option of an extension for one further fixed term of 10 years. That is for those who will be in Parliament during that time, as part of the gains. Therefore, this Bill does not delegate legislative powers or limit any fundamental rights and freedoms.

Hon. Speaker, before I give chance to the seconder to speak on the Bill, it is very important that I highlight one or two issues. Today is a very great day. I was in the 10th Parliament when the late Hon. Mutula Kilonzo brought this Bill. It did not see the light of the day. During the 9th Parliament, our substantive Speaker and many of my colleagues seated here were there. Hon. Martha Karua was the Minister of Justice and Legal Affairs. We went through a tedious process but the Bill could not see the light of the day. I urge the 11th Parliament to rise to the occasion. The 10th Parliament is known for the enactment of the Constitution of Kenya 2010. We want the 11th Parliament to be remembered for enacting this law and giving the women of Kenya their constitutional right. This is one of the many things that the 11th Parliament will be remembered for. It is not a favour; it is their right.

(Applause)

This afternoon, I am speaking for the Jubilee Coalition and my colleagues on the other side of the House. I want to ask our colleagues in the Senate to follow from where I picked. I want each and every one of us who will get an opportunity to speak to support this Bill. At the

end of this debate, I would like all of us to be present so that we can raise the 233-Member requirement for the Question to be put.

The Bill seeks to amend Articles 97 and 98 of the Constitution, on the composition of the National Assembly and the Senate, respectively. The amendments provide for a top-up mechanism in form of special seats to fill either gender deficit after the general election. If at any time there will be fewer men than women in this House, the same principle shall apply. Some of us might be beneficiaries. I know that some sitting women Members like my friend, Hon. Kajuju, and the Deputy Speaker, will be vying for gubernatorial seats. The Deputy Speaker wants to become the great Governor of Bomet County. She might be the first or the second governor after Hon. Cecily Mbarire. We are producing two great ladies to vie for gubernatorial seats. We are yet to see our competitors in the Opposition produce ladies to vie for gubernatorial seats. The Jubilee Coalition is ready to present two of our strong ladies: one for Embu County to deal with my friend, Governor Wambora, and another one for Bomet County to deal with Governor Isaac Ruto.

(Laughter)

We want our colleagues in the Opposition to produce two great ladies. I am sure that Hon. Gladys Wanga can vie for the gubernatorial seat for Homa Bay County. Hon. Fatuma of Wajir County can also become a good governor. Hon. Shukra Hussein can become the good Governor of Garissa. This is just the beginning. We must have a partnership. This Bill provides for a partnership of both genders. We are already partners in many ways. Let us have this partnership in law so that the men of this country, and particularly those of us who are in the 11th Parliament, can do what the 9th and 10th Parliaments could not do. Once approved, these amendments will apply after the 2017 General Election. That is provided for in Clause 2 of the Bill. Members will be elected on affirmative action seats provided for in Clauses 91(1)(c), 98 (1) (b), (c) and (d), and may serve for only two terms. Those of us who will be beneficiaries of this affirmative action will only serve for two terms.

The proposed amendments also provide guidance on the process of allocating special seats to political parties. This is provided for in Article 90 of the Constitution. It calls for amendment of the Election Act and the Political Parties Act to ensure a competitive process of filling up the special seats. The special seats will not just be dished out. There shall be criteria in the Election Act and the Political Parties Act. This means the number of Members of Parliament will keep on changing.

Some people argue that if we add more Members, we will have to add more seats in this House, which has 349 seats. When we visited the House of Commons with Hon. Chrisantus Wamalwa, Hon. Shill and Hon. Alice Wahome last time, we realised, during Prime Minister's Time; that a quarter of the Members of the House of Commons had no physical seats to sit on. They virtually stood as the Prime Minister talked. The rationale is that at any given time, we have less than 150 Members seated here. So, we will not even change this Chamber. This Chamber is only filled up during State of the Nation Address by His Excellency the President, when our colleagues from the Senate join us for a joint sitting. There is always space. That is not a very good reason. We can have some Members standing.

I want to confirm that the Kenya National Assembly has been rated as the most disciplined Parliament in the world. When we were at the House of Commons, there was noise

all over. Members were making noise and throwing things. Women account for approximately a half of this country's population. They have a right to be represented.

There are those who argue that women are not experienced. The experience of women is different from men. The elections of this country are tedious and laced with violence. I am sure from the 1st Parliament to this Parliament, the numbers are growing. Women are coming up for elective seats and, at the end of the day, we can achieve this.

There are those who argue that no western power has realized gender equity. Who said we should follow the western culture? I am one person who, both in my culture and religion, do not follow the western culture. Why can we not set precedent? Why can Africa not be the first to set this precedent? Why can Kenya not be the first to set precedent?

Finally, I want to say it from a family point of view that, if there is a woman behind you and you have a blessed mother like mine and see the role women play in our constituencies and counties, women are the best leaders. We can prove this by passing this Bill. I want to confirm that the Jubilee Coalition under the leadership of our party leader, President Uhuru Kenyatta, his Deputy, all our county assemblies and supporters will support this Bill to the last minute.

I now ask hon. Chepkong'a, the Chair of the Committee on Justice and Legal Affairs, to second this Bill. He is asking me if I am sincere. Before I say how sincere I am---

Hon. Speaker: Nobody heard that. Those are statements under the table.

Hon. A.B. Duale: He was not in the House. I want to ask this senior leader to rise to the occasion and allow Moses Masika Wetangula to have his rally in Kakamega and to second.

Hon. Speaker: Have you moved?

Hon. A.B. Duale: I move and ask hon. Chepkong'a to second.

Hon. Speaker: Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, hon. Speaker.

(Loud consultations)

Hon. Speaker: Order, Members! Leader of the Majority Party and hon. Wamunyinyi, from where each of you is sitting, when you start conversing, obviously, you make it impossible for the House to follow the proceedings.

Hon. Chepkong'a: Thank you, Hon. Speaker. I rise to second this Bill in the strongest terms possible. I expect hon. Wanga to listen to me. It is only that we do not enforce party discipline here.

Hon. Speaker: No! She does not have to listen to you. She is consulting on something.

Hon. Chepkong'a: Thank you, Hon. Speaker. I rise to second.

Hon. Kaluma: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order, Hon. Kaluma? You seem quite agitated. What is the issue?

Hon. Kaluma: This is a very serious Bill. It is touching on how to empower the gender that has been subdued for quite some time in history. Is the Leader of the Majority Party - the Mover of this important Bill - in order, having spoken well for the female gender, to nominate Hon. Chepkong'a to second this Bill? This is a Bill that ought to be seconded by a lady Member of Parliament.

Hon. Speaker: Perfectly in order. There is nothing out of order.

Hon. Chepkong'a: Thank you, Hon. Speaker. His observations are in order. I am, of course, rising to second this Bill as the Member of Parliament for Ainabkoi Constituency and, more importantly, as the Chair of the Committee on Justice and Legal Affairs. As you know, we have tabled a Report on this matter in which the Committee on Justice and Legal Affairs discussed, deliberated and resolved unanimously - without any dissension - to support this Bill. The Report that has been tabled here completely supports the position that the Leader of the Majority Party has taken in respect of this Bill.

As you know, I am also a family man. I have two girls and one boy. That tells you that my son and I are on the minority. The passage of this Bill will also empower me to nominate someone else, so that we may be at par in my house. At the moment, I am the loser. Every time we vote, I lose with my son. This Bill is important to me because it is not a Bill for the women. It is a gender Bill. Gender involves both male and female. Anyone imagining that we are supporting a Bill for women is completely wrong and headed in the wrong direction.

This Bill is important because it seeks to fast-track and advances the rights that women have obtained in the new Constitution so that, those rights may not only be observed, but also seen practically in this House. It seeks to clarify the misunderstood notion that the calculation of the extra women expected to be nominated into this House or whichever gender will be based on the 349 members. The calculation is based on the 290 members because, already, the 47 Members are affirmative action seats. You cannot calculate the gender parity rule on the basis of affirmative action. If you calculate the two-thirds, you will find that the number will be about 27 to 28 more Members; taking the House as it is at the moment. That number in terms of expenditure is not expensive. It is the least intrusive in terms of expenditure into our wage bill.

Anyone who advances the notion that nominating more women would be too expensive and will increase the wage bill in this country is completely and totally mistaken. If you look at the amount of money we lost in the National Youth Service (NYS) saga, it would pay for five years the 28 Members of Parliament. It is in fact corruption which is expensive. It is not the nomination of women into this House or the Senate. The requirement under Article 27(8) of the Constitution is that there must be, at least, two-thirds of either gender in any institution. This seeks to ensure that we meet the requirement in the Constitution. We considered this in the Committee on Justice and Legal Affairs.

Many people have also been trending with the notion that this will require a referendum. It does not require a referendum and when the two Houses pass it, it will become law. On the question of interpretation, that will be left to the Supreme Court or the High Court. As we sit right now, there is an order from the Supreme Court that a Bill must be introduced into the House for debate for purposes of ensuring that we comply with Article 27(8) and 81(b) of the Constitution.

The main purpose of this Bill is to give lasting solutions to the issues of gender parity and equity in elective positions and, more specifically, in the National Assembly and the Senate. The Bill also proposes to amend Article 97 of the Constitution, which requires the National Assembly to have, at least, not more than two-thirds of either gender in the House and equally, under Article 98 of the Constitution, for the Senate.

The proposed amendments in Articles 97 and 98 of the Constitution provide for a top-up mechanism that is special seats for any gender deficit after the general election to ensure that not more than two-thirds of membership of both Houses is of the same gender. This has worked very well in the county assemblies. We have complied with this rule in the county assemblies. There

is no reason why this rule should not be applied to the two Houses. As you know, the county assembly is the equivalent legislative arm of the county government. If the county government has already complied, why should the national Government not comply? It is important that the rule applies seamlessly across the country and to all institutions.

As the Leader of the Majority Party has already stated, the amendment that we are proposing to the Constitution, the Elections Act and the Political Parties Act, seeks to include a sunset clause of 20 years. This is not going to be permanent as we expect people to elect more women or men or *vice versa*, depending on the number that has been elected.

This Bill is very important. We support it as a Committee. As the Member of Parliament for Ainabkoi Constituency, I support it. As the Leader of the Majority Party has said, the Jubilee Government supports it.

(Hon. (Prof.) Nyikal consulted with Hon. (Dr.) Shaban along the gangway)

Hon. Speaker: If the Member for Seme could take his seat so that we proceed. Why not sit there? Sit next to her. She is not harmful.

(Laughter)

Do not fear the seat of the Leader of the Majority Party.

(Question proposed)

Hon. Speaker: Let us have Hon. Wanga.

Hon. (Ms.) Nyasuna: Thank you, Hon. Speaker. As I contribute to this Bill, I would like to thank very much the Leader of the Majority Party, whom I do not agree with in many instances but today, I fully agree with him, and the Member for Ainabkoi, who is also the Chair of the Departmental Committee on Justice and Legal Affairs, for very ably moving and seconding this very important Bill.

Affirmative action is a global concept. Let me start by giving you a quote that was made by President Lyndon Johnson to justify affirmative action. With regard to affirmative action as pertains to race relations, he said:-

“You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say you are free to compete with all the others, and still just believe that you have been completely fair.”

Affirmative action measures are meant to break down barriers – those that we can see and those that we cannot see – and to bring people to a level playing field. As the Majority Leader and the Chair of the Departmental Committee on Justice and Legal Affairs have both said, this Bill is not about women. It is about gender and that refers to both men and women. Today, as a House, we are standing up for our sons, daughters, mothers, fathers, brothers and sisters. Today will go down in the history of this country and this House as a very important day. The mood of the House is very good moving forward.

The coming of the Pope and what he said was very useful. He said:-

“Women are important voices in today’s society. Sometimes, we are too “machistas” and do not make room for women. Women are able to see things differently from men, and they ask questions that sometimes men do not get.”

Those were the Pope’s words, not mine.

Article 27(3) of the Constitution states that women and men have a right to equal opportunities, including equal representation. Article 100 of the Constitution states:-

“Parliament shall enact legislation to promote the representation in Parliament of—

- (a) women;
- (b) persons with disabilities;
- (c) youth;
- (d) ethnic and other minorities; and,
- (e) marginalized communities.

This Bill, therefore, seeks to comply with this very well and elaborately articulated constitutional principle and to bring the voices of women on board. Women alone cannot move things. Neither can men alone. We need the men, not just in this House, but out there as well. Equally, the men need us, not just in this House, but out there as well. It is a matter of mutual co-existence.

Hon. Shakeel is saying mutual intercourse but I meant mutual co-existence.

(Laughter)

There has been a concern about a bloated House or bloated numbers. When you work out those numbers to 290, as the Secunder has ably said, you find that if, for example, we increase the number of women we currently have elected in constituencies from 16 to 32, the number we will need after implementing this principle is not more than 28 to 33 members being brought in on the affirmative action principle. From a Commission perspective, looking at the House, it will still be able to accommodate us. It usually does when we have joint sittings. It can accommodate us. We will not need to break down walls or move to a new building because of implementing the two-thirds gender principle.

The other very attractive bit is that this is affirmative action. It is not here to stay forever. What this Bill advocates and what the subsequent legislation is going to enforce is that no person shall vie for affirmative action seats for more than two terms. Therefore, even those elected as women’s representatives have to think about the future. They will not vie for more than two terms. They cannot keep coming to Parliament on affirmative action seats. We have to give room for other women to take the affirmative action places and nominations. The sunset clause of 20 years will allow us to sit back and review those affirmative action seats after 20 years. Probably, in 20 years, we will have as many female governors as we do male. We will have as many female senators as we do male, if not more. We will have as many female Members of the National Assembly as we do male. Therefore, the affirmative action clauses within our Constitution will then come to a sunset naturally.

I thank the men of the 11th Parliament.

(Applause)

The men of the 11th Parliament have supported every Bill that has come to the Floor of the House that relates to gender matters and matters that strengthen women, people with disabilities and minorities in this country. I am sure that this Bill will be no exception. As they usually support other pieces of legislation, they will support this Bill as well. I would like to thank my male and female colleagues. Let us support this Bill and bring up the women of Kenya. Let us stand up for the women who wake up very early to vote for all of us. It is the women who are committed. It is said that if a woman promises you, she will give you!

(Laughter)

Hon. Speaker: Order, Members. Hon. Wanga ends with a promise. Hon. Mbarire.

Hon. (Ms.) Mbarire: Thank you, Hon. Speaker, for giving me this opportunity to add my voice to that of my fellow colleagues in supporting this very important Bill.

Let me start by saying that what we are doing today is a journey that has been walked for a very long time. For those who may not know, the first affirmative action Bill was brought to this Floor in the Eighth Parliament by Hon. Phoebe Asiyo who, I believe, is watching today and praying to God that we can end that journey that she began in the Eighth Parliament.

We also had it brought in the Ninth Parliament, the 10th Parliament and now in the 11th Parliament.

(Loud consultations)

Hon. Speaker: Order, Members! Those Members, who are congratulating Hon. Wanga, please, do it silently.

Hon. (Ms.) Mbarire: Hon. Speaker, they are following the promise.

(Laughter)

We urge this House, as the women of this country to, please, end this long journey by making sure that we implement Article 27 of the Constitution which I would like to remind Members what it says. Article 27 is on equality and freedom from discrimination.

(Loud consultations)

I am unable to continue.

Hon. Speaker: Order, Members! Why is it that even the elder Members of society like the Member for Rongo are not able to withdraw in silence? Is it just because of that---

Hon. Members: Promise!

(Laughter)

Hon. (Ms.) Mbarire: Hon. Speaker, Article 27 of the Bill of Rights says that every person is equal before the law and has the right to equal protection and equal benefit of the law. It goes further on sub-article (3) to say that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

It goes further in sub-article (6) to say:-

“(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.”

Finally, in sub-article (8) it says:-

“In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”

It is on that basis that we are today debating this very important legislation. I want to thank the Leader of the Majority Party for the support that he has shown from the time we put this Bill together and the Departmental Committee on Justice and Legal Affairs led by its Chairman, Hon. Chepkong'a, who has gone through this Bill. We have had many meetings together.

May I also thank the very many supportive men of this House who have sat with us at breakfast meetings, dinners and lunches to discuss this important Bill. Therefore, I want to plead with this House that as we debate this Bill today, please, remember that it has been a long walk to get the women where we are today.

If it were not for affirmative action as enshrined in the Constitution, we would only be having a maximum of 21 women in this National Assembly today. Why? It is because we only have 16 women elected at the constituencies for reasons that we understand; reasons of economic challenges, cultural challenges and many other factors around elections that impede women from participating actively in politics. But because of affirmative action in the Constitution, we are lucky today that we have 47 women coming from the counties. You will all agree with me that the voices of those women have made a difference in the laws that we have passed in this House. So, I urge Members of Parliament today, the great men of this House who come here mainly because of the women vote, to pass this Bill because of the women vote that they get. Also to remember that the reason we are passing this Bill is because the environment is such that it is impossible to bring women here without affirmative action; a number that is critical enough to make a difference.

In the last Parliament where we had the luck of having Hon. Mbadi here, we were only 22 women in a House of 290. We were unable to pass crucial Bills that affect women because we were very few voices. In this current Parliament, you will agree with me that we have passed four critical laws that touch on the women of this country because we have a bigger voice. We are asking for a much bigger voice so that we can even bring more laws that would not only touch on the women of Kenya, but also the men of this country.

As we continue debating this, we are asking the men not to just look at the women who are seated here today but to remember - like the Leader of the Majority Party and the Chairman for the Departmental Committee on Justice and Legal Affairs have said - that you have left many women back home. You have left your mothers at home. You have left your daughters. You have left your sisters who are looking up to you to see whether you will stand with them today. We are not doing this law for the women who are here today. We are doing it for the women of this country who are born and yet to be born.

I also want to add one more thing. We have proposed a sunset clause to this affirmative action. Affirmative action by its very nature is temporary. Therefore, we are expecting that in 20 years, women will be well prepared and nurtured enough to participate actively in politics together with men, without the challenges that we are facing today. That the Kenyan population will have understood women leadership and will have no problem electing a woman going forward *vis-à-vis* a man in a competition. That is why we have set the sunset clause.

The other thing we have done is that we have proposed a term limit of how much a person can benefit from affirmative action. So, if you are elected going forward on affirmative action, you cannot come back more than two terms. Why are we doing so? We are doing that on the basis of the understanding that after 10 years, you will be well prepared to face the rest of the men out there and be able to run an election and win as a woman.

With those many remarks, may I beg the great men of this House to support this very important Bill for posterity!

Thank you.

Hon. Speaker: Hon. Chris Wamalwa Wakhungu!

Hon. Wakhungu: Thank you, Hon. Speaker. I rise to support this Bill. Indeed, scientific research has shown that women are better managers than men. This is academic. So, I have no doubt that we should pass this Bill. This is a constitutional time-frame Bill.

This is well proven. If we borrow from Article 177 of the Constitution, it is something that has happened in the counties. So, we are not going to re-invent the wheel or whatever the case. Mine is to encourage our colleagues to support this Bill. Indeed, it is coming at the right time.

My only worry is the issue of size. Research has shown that the population of women who vote is about 55 per cent. As we bring this Bill on board, we encourage women voters to vote in women. Women should also come out competitively.

When I look at this Bill, there is a clause which I am happy about in terms of nomination. When it comes to nomination, we do not want to find people nominating their girlfriends or their relatives. We must have a framework in place so that the women who are going to compete for those competitive seats, the best loser or whatever the case, should be given priority as far the nomination is concerned.

My worry is that you are going to see many women shying away from elective seats. If such a case is going to happen, for example in a population of 296, you will have only men elected. Then it will require that a third has to be nominated. The pressure on the wage bill is going to be high. As we put this Bill in place, it is important that women go for those elective seats so that they can increase from 16 to 32, so that the number of women to be nominated goes down. This is going to be very critical and it should go to people out there. The amendment to the Political Parties Act and Elections Act are two critical laws that will govern elections. The Political Parties Act states that political parties must embrace this by giving some reserved positions for women to go for that particular nomination. This will increase the chances of women who are going to be there.

I have a proposal that if you want to encourage more women to be elected, then those who are already Members of Parliament should go for the respective constituency seats to allow other women to come in for purposes of affirmative seats of the 47 counties. By moving that way, we will minimise the high percentage of women who will be nominated to take care of the wage bill.

I also wanted to mention about the 20-year period. In many jurisdictions, the affirmative period is 20 years. But the clause provides that once you reach 20 years and you have not gained the threshold, then it is extended for another 10 years. I hope this will not come to men. My humble request as we go to the Committee of the whole House is that we can amend to remove 10 years because this will help women to work harder so that we only work for the time-frame of 20 years. I can see my friend (Ms.) Hon. Kajuju looking at me. I can confirm we are here because of our mothers. Some of us were brought up by our grandmothers and I salute all women. They can be very good leaders and we encourage them to vie for the gubernatorial seats. I salute Hon. Deputy Speaker and Hon. (Ms.) Mbarire who are going for the gubernatorial seats. We hope that if they become governors, we will have good governance and will add more value to the people at the grassroots level. We want to have women governors and have the “first men”. We only hear of the first ladies in the counties. It is critical to see how things will go. As this Bill goes to the Senate---

Hon. Speaker: Did you just say you want the “first men” or “gentlemen”?

Hon. Wakhungu: Yes, Hon. Speaker. There is an association for spouses and as we go on, we also want to have a spouse association for men. I saw you had a courtesy call. We encourage them to continue. My wife has been very busy and has not had a chance to join, but she will do so soon. It is difficult to have two politicians in the House and, sometimes, that is the risk we want to minimise. We are not comfortable when they encourage others to come up.

As the Coalition for Reforms and Democracy (CORD), we are committed to the two-thirds gender rule. The public should know that we are committed and that is why we are here. It is only that we were not given a chance to second that Bill. Our three principals have been on record saying that we are committed to support the two-thirds gender rule.

Thank you, Hon. Speaker. I support.

Hon. Speaker: Hon. Johnson Sakaja.

Hon. Sakaja: Thank you, Hon. Speaker. I am proud of this piece of legislation we are discussing. We begin the process of making history by passing these provisions in our laws. Any country’s claim to democracy is tainted whenever any section of that society finds it hard to be in mainstream leadership or fails to be represented. I would like to quote Ban Ki-Moon who said that this is a century for women and that we will not realise our full potential if half of humanity continues to be held back. For that reason, I am very pleased to support this Bill. The female Members in the House - and I can see Hon. (Ms.) Mbarire. She can confirm that I am an honorary Member of Kenya Women Parliamentary Association (KEWOPA) and that I have been a champion for these issues.

The provisions in this Bill have been controversial in the eyes of many. Many have said that we are trying to bloat leadership and force female leadership on people. We will not be where we must go if the entire leadership of this country, especially a House that makes decisions such as this, is led by men alone. If we had women we intend to nominate through the provisions of this Bill which is well thought out, then we would look at things a bit differently. I am glad that Hon. Wamalwa has asserted the fact that his party supports this agenda. I hope you will align your faith with action when it comes to voting and mobilising your Members to be in the House.

As the Chairman of The National Alliance (TNA) Party, I am proud that out of the 16 Members elected in single member constituency, eight are Members of TNA. United Republican Party (URP) has four Members. So, Jubilee had 12 Members and CORD had four and that adds

up to 16 Members. This happened not because CORD does not believe in women leadership or that we believe more, but our support for women leadership must move from high sounding declaration by political parties. It must move into action. Before you came Hon. Speaker, you are aware of the kind of nomination procedures and rules parties put themselves through. Having been through that process, I would like to state with authority that when you put a huge premium and penalty on anybody causing violence at the nomination level and ensure there is a level playing field at the nomination level, then women and young people will get elected. That is what has happened in Jubilee. The other day, we were discussing Hon. Wamalwa's amendment on the Political Parties Act to deal with funding; that a party cannot get funding if more than two-thirds of its officials are of the same gender. How many parties are complying with that? I know my party and URP are. How many parties within CORD are complying? I think the Orange Democratic Movement (ODM) is complying. I know Hon. (Ms.) Wanga is the chairlady of the county. When it comes to Chairs of the county, at least, one-third must be from either gender. I would like to ask leaders of parties - and I can see the Chairman, my opposite number Hon. Mbadi and the Secretary-General of ODM, Hon. Wamalwa, the embattled deputy party leader of FORD (K), Hon. Eseli and the Chairman of URP here - that even within our party rules, to consider this. Let us ensure that not more than two-thirds are of either gender. We should involve women in those levels of leadership.

It has been said that we are doing women a favour. I would like to state categorically that by passing such provisions, we are not doing women a favour. We are doing our nation a great service. It is, indeed, service to our nation. I do not know if in 20 years, it will be men receiving that affirmative action. There are also a few women who have disappointed in leadership. Many can name the scandals women leaders have been involved in. But for every one woman who has disappointed in leadership, there are three or four men who have also been involved in scandals. So, we cannot use that yardstick because I have seen some members saying: "Look at the women we gave power in the Cabinet and parastatals." What about the men? We have also not been any better.

There is one thing I am extremely passionate about which I would propose we include in this Bill. When we come up with the lists, either in the regulations or in the Elections Act as an amendment - because I am not sure if we can amend a constitutional amendment - we should ensure that we put in what we call the "zebra principle." For every nominated woman above 35 years, the next on the list must be a woman below 35 years so that we will have hit two birds with one stone. That way, we will also ensure that young women who, many a times, are left out when those positions are being dished out, get an opportunity. We will ensure that the rural women who, many a times, may not get the opportunity are not left out. That is because those who get the opportunity are those who find their way to Nairobi or to the party headquarters. I assure KEWOPA that if we put in those provisions, I will personally mobilise 50 members of the Kenya Young Parliamentarians Association to support and make sure that it passes. We should put that zebra principle which will ensure that for every woman above 35 years, we have a woman below 35 years and even women with disability so that we can address the issues of disability, youth and those of women. I can see Hon. Mbarire nodding in the affirmative.

I appeal to my male colleagues. I know many times we have said and many women have thought that it is the "womanness" or the femininity of the women that is detrimental to their progress. I have seen that kind of thinking. I would like to say that where we are as a country today, we need women who have critical minds and compassionate hearts. We need leaders who

believe in dignity and honour. You will find that within women. We need women who have a hope that anchors them and principles that guide them. This is because when women are principled, it is very difficult to move them from those principles. We need women who can see the faces of those they are representing more than men, even as women may focus more on the statistics of the people we are representing.

I can see lights are being switched on. I would like to encourage the women out there. As a party leader, we had a very difficult time in the last election coming up with women for those nomination lists. This is because in as much as many were participating in rallies and activities, very few associated themselves as members of the parties and as interested people. I am sure it was the same case in the Orange Democratic Movement (ODM). It is good that now we want women to vie for those positions. We will support them. If you are not supported in CORD, come to the Jubilee Coalition. We will support you wherever you are in this country to make sure that we get there. I wholeheartedly support this Bill. Thank you.

Hon. Speaker: Hon. Opiyo Wandayi.

Hon. Wandayi: Thank you, Hon. Speaker. At the outset, I also wish to support this very progressive Bill. This Bill could not have come at a better time. We are going to defend and support it very vigorously on our side.

It is a fact that women have been disadvantaged over time on account of traditions and cultures. Therefore, the only way you can bring them up to the same level as men is through affirmative action such as what this Bill is proposing. Any person who means well for this country must support this Bill. It is not possible for us to imagine that women can go out there, compete, beat men and come to this House. It has been tried and failed. I also understand that women do not like electing fellow women for reasons I cannot understand. The fact of the matter is that we have to do something to catapult women to the same level as men.

As we debate this Bill, I also reiterate what my friend, Hon. Sakaja, has just said, that political parties themselves must take definite steps to address this imbalance at the stage of nominating people to contest for those elective positions. Political parties must demonstrate their commitment to this affirmative action and to the gender parity principle by doing what they should do under the Constitution. We know that some of those political parties are actually owned by men. It will do us a lot of justice if these parties would go an extra mile and encourage women to participate in nominations and nominate them. That would reduce the eventual cost that this Bill portends for the country.

It is also a proven fact that women leaders have not been a disappointment across the globe. Many women who have held positions of leadership have not been a disappointment in comparison to men. In fact, very few women leaders have been prone to scandals. You can mention a number of names starting with Margaret Thatcher and Benazir Bhutto. Even though the current President of Brazil, Dilma Rousseff, has problems here and there, she is trying. Here in Africa, we have very many women leaders like Ellen Johnson in Liberia, Joyce Banda and Winnie Mandela. Locally, we have the late Wangari Maathai, our own Ida Odinga and many others. We need to support this Bill if only to ensure that the constitutional provisions are adhered to.

As we support this Bill, it is important to reiterate the fact that there is no way you can envisage achieving total development if a good proportion of the population, which is women, is side-lined. Unless you provide them with the opportunity to be in positions of leadership, you are essentially side-lining them. A people side-lined cannot participate meaningfully in the

development of a nation. As it was aptly put by Hon. Wamalwa, this Bill has the strongest support of our coalition. In fact, our party leader, former Prime Minister Raila Odinga is very passionate about this principle of gender equality. He fully supports this principle of two-thirds gender rule.

Therefore, I expect that we will pass this Bill without a lot of problems. We expect it to go through so that this 11th Parliament can go down in history as a Parliament that enacted a legislation that has enabled the gender principle to be embedded in our way of life.

With those few words, I support.

Hon. Speaker: If all of us can utilise time like taking five minutes, we will have many more members contributing. I can see we already have over 62 members who have requested to contribute. Hon. Nyokabi.

Hon. (Ms.) Kanyua: Thank you, Hon. Speaker. I also rise to support the Bill and appreciate that the country has come to where we are today. It has been a long journey. The constitutional review exercise was not easy. That is why the 11th Parliament was left to determine and create a mechanism that would allow the two-thirds implementation as stipulated in the Constitution. The courts have spoken. The courts have given that mandate back to the 11th Parliament to give the country an implementing mechanism. I am very proud that the 11th Parliament has not shied away from that responsibility and, today, we meet here to discuss and deliberate this Bill.

Hon. Speaker, let me also support this law as a woman who has, one time, tried to contest for a position in an organisation of lawyers. A month was given for the time for candidates to prepare. I put a bid to be a leader in that organisation. The surprise of all surprises is that the night before the election, some leaders called me aside and told me that I needed to drop my candidature; that my candidature was not suitable for the mere reason that I was a woman. There was not anything I had done; nothing unconstitutional; nothing to break the rules of that organisation; nothing to refuse to honour the constitution of the organisation but only on the mere reason that I was a woman and it was desirous that other candidates be given an opportunity and not me. So, as we support the two-thirds law today, there are, indeed, barriers that are stopping women from contesting. There are barriers that stop women from being elected. There are barriers that stop women from electing other women. Those barriers are in our traditions, cultures, economics, academics and financial matters. So, there was a reason to have a mechanism that will start encouraging women to contest in the elections--- The Constitution of Kenya (Amendment) Bill we are discussing today is accompanied by the Elections (Amendment) Bill and the Political Parties (Amendment) Bill that, in the first place, as many women as possible will contest in the elections.

In the 2013 Elections, the Independent Electoral and Boundaries Commission (IEBC) has been able to show that 15,000 men contested in the elections. About 1,000 of them were elected both at the national level and at the county level. The percentage for the election of men was about 15 per cent. A man contesting in an election in our country has a 15 per cent chance of being elected. The IEBC in the same report has been able to show that about 1,000 women contested in the elections of 2013 and 14 per cent of the women who contested were elected. In analysing those statistics, the IEBC has been able to show that if we have more women contesting in the elections, there is a chance that more women would be elected. If that were to happen, it would tie in with the Bill we are discussing today that if women are elected, there will be no reason for top up. The top up will only arise where women are not elected. I agree that the

law is gender neutral. For this particular elections and the last one we have had, it has been the numbers of women that have been lower. Maybe going forward, it will be the other way that numbers of women will be higher. The Bill that is before us today has been carefully thought out to look at the least intrusive constitutional amendments.

We are not changing the electoral system. We are not changing the electoral cycle. We are not interfering with the constitutional mandate of elections as we know it. But, the law is changing in a way that allows women, if they do not get elected, to be nominated. That is in the Bill that we are discussing today.

Other than the Bill being the least intrusive, it is also the least permanent mechanism for nominating Members to the National Assembly.

[The Speaker (Hon. Muturi) left the Chair]

[The Deputy Speaker (Hon.(Dr.) Laboso) took the Chair]

Hon. Deputy Speaker, we, indeed, agree that the National Assembly needs to have definite numbers of legislators who sit in it and in the Senate. Even as we say that the method proposed by the Constitution of Kenya (Amendment) Bill that we are discussing today is also the least permanent in approach, it does not require the country to set aside any permanent number of seats upon which the nominations will be based. The number of seats would be determined by each election as and when the results are announced by IEBC.

I am happy to support and urge, like everybody else who has spoken before me, that we unite as a country behind this law; that the Jubilee and CORD coalitions unite behind this law to give this country an implementing mechanism for the main Houses of decision-making - The National Assembly and the Senate. Even as we look at the two-thirds in many other places, the National Assembly and the Senate will in 2017 be compliant with what the Constitution requires. We are mindful of the fact that women are 50 per cent and so, if we were going for gender parity, we would be asking for 50/50 representation. As it is, the Constitution already sets the two-thirds principle and so, the House today is merely implementing that which the Constitution has set forth in the two-thirds gender law.

We want to thank the principals, the party leaders in Jubilee. We have had occasion as KEWOPA Members to meet the President of the Republic of Kenya and he has supported this law. We have had the occasion to meet the Deputy President of the Republic of Kenya and he has also supported this law. The Members from the CORD Coalition have had occasion to meet the former Prime Minister and he has supported this law. With a law supported by all the leaders of our coalitions, including the former Vice-President and Leader of the Minority Party in the Senate who are also the CORD co-principals, we are happy. We believe that this law will, this time, get a chance and will be implemented in a way that the talents of both men and women will be given a chance. This is sure way of attaining the double digit economy and achieving the prosperity that we are looking for.

Sometimes, it is thought that the law is moving faster than the society but, on this one, there was no other way. It is the law first and then the society will start to see the benefits of having women in leadership. The society will start to appreciate the values of having women in leadership. The society will start to elect women and men based on the leadership credentials that we will be asking for.

We are, indeed, happy to support. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you. Hon. Agostino Neto.

Hon. Oyugi: Thank you, Hon. Deputy Speaker. I rise to support this particular Bill. I am a member of the Parliamentary Caucus on Human Rights. One of the things that has agonised us for a long time is how to give effect to Article 27(8) of the Constitution. We have promised the Hon. Ladies in this particular Parliament who are in KEWOPA that each time there will be a Bill that would give effect to Article 27(8) of the Constitution, we shall stand with them and we shall advocate that all Members of Parliament support them.

Having said that, we support this particular Bill. Let me also pay tribute to the Hon. Ladies who got elected in single constituencies like Hon. Alice Ng'ang'a, Hon. Peris Tobiko, Hon. Joyce Laboso and Hon. Millie Odhiambo, amongst others. It pays tribute to the fact that Hon. Ladies can actually go into what is perceived to be a male turf and fight from within and win those particular seats. To these particular ladies, we owe them so much.

Hon. Deputy Speaker, of course, I have mentioned you. These particular ladies have shown that it is good and it is possible.

Let me also pay tribute to the Hon. Ladies who are also going for the gubernatorial seats. To that extent, I thank our very own Hon. Joyce Laboso and Hon. Cecily Mbarire for staying hungry. That speaks to the fact that some of them are not comfortable with affirmative action positions. They are willing to go the extra mile. I know for a fact that there are Members of Parliament who were elected in the 47 county seats who are really rearing to go for the single member constituency seats. To that extent, I have in mind my very good friend Hon. Aisha Juma, the iron lady of Malindi County, amongst many others.

Having paid tribute to those particular Members of Parliament who are women, time has come for this House to support this legislation. The 11th Parliament must be remembered for something. We gave effect to the Protection against Domestic Violence Bill which took forever to pass. This House made it possible. This House ought to give effect to this legislation. If it is for nothing else, let the 11th Parliament be remembered for the fact that it gave women a chance of equality in elections. It is to that extent I ask my colleagues to support it. When Members of the pastoralist community wanted funds for the Equalisation Fund, we stood with them. People with disabilities have brought issues to this House and we have stood with them. This time round, the women of this House have today requested that Members of Parliament, both men and women, stand with them on this issue of affirmative action seats. The most honourable thing we can do is to stand with them.

(Applause)

Several things have been said. But the provisions of Article 27(8) also say that apart from just passing the law, we must put in place that which will give effect to it. I am very happy that the various party leaderships which include the Hon. Members who have spoken, like the leaders of FORD (K) and The National Alliance Party have said that they will make sure their political parties behave in a manner to give support and necessity for women. That is so that women are able, just from the political party levels, to move and fight for those seats.

Having said that, let me specifically speak to the provisions of this Bill. This legislation is couched in a way that is very good. One, it puts up a sunset clause. It is not believable that the

affirmative action principle will go on forever. It puts a time limit. The sunset clause makes it attractive.

The second thing I would like to point out is the fact that no person running on the affirmative action seats shall do so for two terms. That means once you have run for those seats for the first time, it forces you to have ambition. If you did not have ambition, this seat is going to be the wrong seat for you to run to. The other provision I would like to speak to – and it is another attractive provision - is the extent that there will be need, should Parliament find it, to extend this legislation for a term of another ten years. That provision is going to be subject to the two-thirds principle. Two-thirds of the House must vote for that provision.

The Bill is attractive. All of it is going to be given effect after the election. What that means is that women are going to have an equal chance to compete. That is the reason I was paying tribute to the ladies who have been elected on a single constituency seat. First, you must compete. Let us see what you are made of. Let us see you run and win for office. That is going to diminish the number of women who get nominated. The nomination provision is also very good. The list for people who should be nominated ought to be submitted long before the election so that we do not have people tampering with nomination lists or looking for favours. I am sure the Elections Act will be made in a manner that it is handed in before the elections. That way, it is attractive that people who want to compete can do so out of their own volition.

Our Constitution makes the affirmative action principles important and compulsory. The best way would have been to have an electoral system that would have given us proportional representation; an election principle put in the Constitution where we would have the numbers we want for people with disability, special minorities and women. Be that as it may, the electoral principle that we have is to pass the post first. That is not very attractive. It makes competition for women very difficult. That is the reason this provision is good. It is going to give our women a chance to fairly compete and make them very stable.

Lastly and because I know there is a lot of attraction on this seat, I would like to explain to my Members of Parliament that failure to pass this constitutional provision has a penalty. Should we not be able to pass this amendment Bill, any person can go to court for the dissolution of this Parliament. We might be in the tail-end of this Parliament, but the Constitution clearly says that even the subsequent Parliaments will be held unconstitutional to such an extent and time that we must attain the two-thirds gender principle. That is why I was pleading with my colleagues in this 11th Parliament that we do whatever we can. Let us be the House that makes history by ensuring that apart from the Protection Against Domestic Violence Bill, the two-thirds gender principle that has been on the cards for many years now allows the women of this House to stand tall and know that their male and female colleagues stood up with them to ensure that the principle as it is in Article 27(8) of the Constitution was realised by this Parliament.

I can promise you that we who are of the Parliamentary Caucus on Human Rights shall mobilise to ensure that whatever is within our means, our lobbying powers and our friends are brought to the House on the day of the vote to ensure this Bill sees light of day.

With those many remarks, I support.

Thank you.

Hon. Deputy Speaker: Thank you. We want to give Hon. Zainab Chidzuga. She is not feeling very well. Allow her to make her contribution.

Hon. (Ms.) Chidzuga: Shukrani Mhe. Naibu Spika kwa kunipa nafasi hii. Kwanza, natoa pongezi kwa Kiongozi wa Walio Wengi kwa kutuletea Mswada huu ambao haugusii jinsia moja tu.

Kwa sasa, inaweza kuonekana kana kwamba tunatetea haki ya wanawake pekee. Lakini, tutakuwa tunajitayarisha kwa wakati wowote ikiwa itatokea kuwe na upungufu katika jinsia ya kiume katika mabunge yajayo. Hivyo, watakuwa na sheria inayoweza kuwasimamia na kutoa haki katika nyanja mbali mbali katika maeneo tofauti tofauti yanayosimamiwa na mambo yanayotokana na kuchaguliwa.

Mswada huu umekuja kwa wakati unaofaa. Hii ni kwa sababu tusipoupitisha, tutakuwa tumeenda kinyume na Katiba yetu. Hii inaweza kutuletea matatizo. Bunge hili linaweza kusimamishwa kwa kihalifu Katiba tuliyoitetea kwa pamoja.

Pili, katika kutetea Mswada huu, itaonyesha wananchi wetu hususani akina mama ambao hujitokeza kwa wingi kutupigia kura kwamba tunawatambua kwa jitihada walizonazo nyanjani wanapotutafutia kura na kutupitisha ili tuwawakilishe katika Bunge hili na lile la Seneti.

Kwa hali ya Mswada huu, ni wazi kwamba kuna walio na akili potofu kwamba sisi tunajaribu kufungulia akina mama mlango ili watawale waume. Hivyo sivyo. Inatakikana kila mmoja aelewe kila upande wa jinsia una haki ya kutawala, kutawalwa na kusimamia katika ngazi yoyote. Tunapoupitisha huu Mswada kwa pamoja, hatutakuwa tunafungua mlango kwa wanawake pekee bali kwa jinsia zote.

Mswada huu umekuja kwa wakati ufao kuonyesha imani yetu kwa wenzetu wanaume walio katika Bunge hili. Akina mama tuliochaguliwa katika hili Bunge tumesimama na wenzetu Waheshimiwa wa kiume kupitisha mijadala tofauti tofauti. Safari hii, tunaomba mregeshe mkono ili msimame nasi katika vita hivi vya kutetea haki ya akina mama. Si haki ya akina mama tu. Inatakikana ifahamike ya kwamba palipo na mama, hata kama ni ndani ya nyumba inayotelekea, mama husimama na nyumba ikawa imara. Msimame nasi tuokoe taifa letu kutokana na kutokuwa na usawa wa kijinsia.

Sitakuwa na marefu kwa sababu ya hali yangu. Ningetaka nimkosoe dadangu Mheshimiwa Wanga. Tumetoka katika yale mambo ya kutoa tu. Nipe nikupe ndio mtindo wa kisasa.

(Applause)

Kwa hivyo, hatuko kwa kutoa peke yake. Ni nipe, nikupe!
Shukrani, Mhe. Naibu Spika.

(Laughter)

Hon. Deputy Speaker: Let us have Hon. Florence Kajuju.

Hon. (Ms.) Kajuju: Thank you. Hon. Deputy Speaker. I support this amendment. I would like to thank all the speakers who have spoken before me. I congratulate the Hon. Leader for the Majority Party, the Chair of my Committee, Hon. Chepkong'a, and each and every Member who have spoken today. So far, we have not received any opposition and I believe that none is forthcoming. We are aware that we passed a Constitution that 65 per cent of Kenyans said it was good. In this Constitution, we said that we want the two-thirds issue to be raised and applied in the elective or appointive positions. What we are going to do today as a House is to

ensure that the letter and spirit of the Constitution is being satisfied by us ensuring that this Bill passes into law.

It is an obligation on the State to ensure that we take legislative measures to ensure that this Bill is passed. We have had various decisions that have come before courts. The courts have made it clear that though we have a progressive Constitution, the belief is that real progress in society can only be realized if all citizens participate fully in governance. By passing this Bill today, we shall be ensuring that the voice of the woman is being heard in society. We do not only have to see it. Allow us also to voice that which we consider to be positive so that we can develop this country together.

There are cultural challenges that women have had in this country. I thank the people of Meru County for voting for me. However, since 1974, we have never had a woman elected in Meru County. For 39 years, no woman had ever been elected until the affirmative action seat came to be. So, if it were not for this affirmative action, does it mean that the voice of the Meru women would not have been heard?

I know we have various cultures that also operate in the same manner. In Kisii, there was no woman who had been elected until the affirmative action came to be. We need women to participate in all other circumstances. As the Chair of the Committee on Regional Integration, we believe that it is time the East African Community (EAC) integrated fully. As we speak about monetary union, customs union and a common market, we also need to see what our sister partners are doing in their countries. As we speak today, 64 per cent of the Rwandan Parliament has female legislators. In Tanzania, 36 per cent of all the legislators in that House are women, not forgetting the Vice-President of Tanzania is also a woman.

In Uganda, 34 per cent of the legislators are women. That gives us a number of 133 female legislatures in the Ugandan Parliament. That tells you that our sister countries are way far beyond us. We are proud to have integration within the EAC. What we are asking for today is not going by the mathematics because we will not even be at 30 per cent. So, if we are integrating within the EAC, let us also integrate in terms of bringing on board our women so that we can all work together. Article 10 talks about national values and principles of governance. It talks about issues of inclusivity that every citizen of this country must be included in all spheres of life.

We also talk about patriotism. We cannot purport to love our country if we do not love the other gender. We know that our men love us. They love us so much that they always give us what we want in our houses. However, they cannot tell us that they only love us in the House. Let them also love us here in Parliament.

(Laughter)

I can see Hon. Mbadi is expressing a lot of love and I am happy. I wish Hon. T.J could also do the same because we have been in school together and he knows the kind of love that we have shared all along.

(Laughter)

Let us have the women going through the same process. Let them be in politics and come to this House. As we look at the Vision 2030, we are talking about the economic pillar, social

pillar and political pillar. How can you have the third pillar in society without the most important woman in your life? I am sure with Hon. T.J. Kajwang' smiling in the manner in which he is doing, he is only agreeing with me and he has nothing else to add.

Mother Theresa said: "A drop in the ocean is only a drop. But without that drop, the ocean will be less full." What we are asking for today is to allow this Bill to go through. By allowing it, it does not necessarily mean you are going to look at the woman who is in Parliament today or the Hon. female Member who is in Parliament today. You are doing it for your daughters, sisters and for posterity.

I am proud of the Ninth Parliament that passed the Sexual Offenses Act. That was the best moment for the woman in Kenya. In this Parliament, we have passed the Marriage Act, the Matrimonial Properties Act and the sharing of properties within a marriage. We have also passed the law against matrimonial violence. So, if this Bill is passed, it is going to show that the men of the 11th Parliament are the real men in Kenya. Today is the day for the male Members in Parliament to prove that by passing this Bill, history is going to judge them in the right manner. I am praying and requesting my colleagues that we pass this legislation, so that everything that we do will show that we respect our mothers, sisters and daughters, and we wish them well.

I pray that this comes to be and I support it.

Hon. Deputy Speaker: I will give the ranking Member Hon. Oburu Odinga. We have to also respect him being the ranking Member.

Hon. (Dr.) Oginga: Thank you, Hon. Deputy Speaker for giving me this opportunity. This is a great moment for me to speak about a Bill which has been very dear to my heart over a long time. I want to remind Members that in the Seventh Parliament - and Hon. Dalmas will bear me witness - if you dared mention anything about affirmative action or women, you would be booed to the extent that you would not make any further statement. It was very difficult. We want Kenyans to accept that our country has undergone a revolution. Kenya has changed and those who do not want to accept change will be changed by change. Change is, sometimes painful, for people who did not think that women would come this far.

Hon. Deputy Speaker, I am proud of the 9th, 10th and 11th Parliaments. They became friendlier until we adopted the Constitution of Kenya, 2010. Women are very diligent in financial management. If you want to manage your affairs, property and finances well at home, you rely on your wife. She will give you the best guidance and will avoid wastefulness. This has also been proved in public life. We have a few women in public life who are involved in scams, but if you compare them to the men, they are like a drop in the ocean. The number of women who are involved in financial scams are far much less than the men who are involved in such activities.

In our traditional societies, women owned land. For instance, in the Luo community, if you wanted to know whether you belong there or not, you would be asked to identify the demarcation of your mother's land because land belonged to women. You belong to that particular place if your mother had land on which she used to farm. Traditionally, in our community, a lot of clans were named after women because they were very respectable and they participated in counselling and leadership once they became mature enough.

This Bill is giving timelines. This was a very hot issue even in the constitutional debate in terms of whether women should be given an endless affirmative action. In the wisdom of the drafters of the Constitution and this Parliament, it was agreed that women shall be given 20 years affirmative action. I do not know why some people are jittery about extension for another 10

years because it is only meant to ensure that we bring women to a level where they will fully meet the constitutional recommendation.

I am very happy because this Bill recommends nominations after elections. This is important because we want to nominate women who participate in elections. We want them to participate in competitive politics and if they lose, they qualify to be nominated. We do not want women to be picked from their kitchens or gardens because they are friends or girlfriends of the party leaders. We want women to compete and be nominated because they are participating fully in public affairs.

This is a very good Bill which has come at the right time. We stand to be extinct if we do not implement it. We are implementing the Constitution. We are not inventing the United States of America (USA). This is something which Kenyans had already agreed on and put in the Constitution. If we do it, we are also protecting our interests because we also risk being dissolved if we do not implement a constitutional provision like this one. Our party supports this Bill and I am behind it fully. We hope that Members of Parliament will give it the necessary consideration when the day of voting comes. Let us all come in large numbers and get the two-thirds majority to pass this Bill without any problem.

With those few remarks, I support the Bill.

Hon. Deputy Speaker: Hon. Soipan Tuya!

Hon. (Ms.) Tuya: Thank you, Hon. Deputy Speaker. I wish to add my voice in congratulating the Leader of the Majority Party for tabling this Bill as well as Hon. Chepkong'a for ably and strongly seconding and supporting it.

Like it has been said by my colleagues who have spoken before me, this Bill seeks to operationalise Articles 27(8) and 81(b) of our Constitution, which is one of the most progressive in the world. That is an undisputed fact. It envisages and envisions a society based on the rule of law, non-discrimination and social justice.

At the core of our Constitution, which is the gist of this Bill today, is the strong belief that our society can only find real progress if all the citizens are able to participate fully in the governance of this country without any discrimination and in equal measure in building of our nation. This includes women, men, persons with disabilities and all marginalised and excluded groups. This Bill seeks to enforce the two-thirds principle to make sure that all these groups have an equal sitting space around the table of building Kenya.

I wish to highlight a few very salient and important features of this Bill. One of it is to institutionalise affirmative action in Kenya in the way it has been done in many other jurisdictions in the world. One of them is to make sure that we do not have a permanent feature of affirmative action in our Constitution. The Bill seeks to cure an imbalance that has been created by years of marginalisation based on gender lines. Members who have spoken before me have clearly stated that this Bill has not been made for women. This is an issue that needs to be clarified. The Bill seeks to make sure that we attain gender balance in all spheres of leadership in this country. In the likely event the male gender gets marginalised, the mechanism that we are putting in place through this Bill will cure such an eventuality. I can see that Hon. Midiwo is looking at me very keenly.

The only reason why we are talking about women is because the imbalance right now is against women. We are making sure that this House, the Senate and our county assemblies have balanced representation in terms of gender. The affected gender is female. The Bill, therefore, proposes a sunset clause. This principle cannot be applied beyond a period of 20 years. Knowing

where we are coming from as a country, 20 years may not be long enough. If we all put concerted effort from the front as political parties and the leadership of this country to focus and strengthen this principle, the aspiration of the sunset clause will be realised.

The other issue that I wish to mention has been mentioned by my colleagues that the Bill seeks to import Article 177 of the Constitution. It provides for a gender balanced way of making sure that our county assemblies realise the two-thirds gender threshold. This was missing in relation to the National Assembly and the Senate. The Bill, therefore, seeks to import that provision of Articles 97 and 98 of the Constitution to make sure that we have gender balance in the Senate and the National Assembly, come the next General Election.

The proposal put across by the Bill is again very attractive. The debate has been that we should not be making a soft landing for women. I represent women of this country and we are not seeking preferential treatment or soft landing for the women. We are just saying that there has been an imbalance, a perpetrated situation culturally, economically and socially, which has put women in the periphery. We are asking how we can correct this imbalance. The nomination or the top-up process which Article 177 speaks about is intended to bridge the gap.

The Bill has gone a notch higher to make sure that the top-up process will be done in a very competitive way, so that we will not be talking of women being handed leadership positions on a silver platter. That is not what we are proposing. We are supporting that every person, man or woman, will go through a competitive electioneering process. In the event the two-thirds threshold is not realised after the elections, each political party will go back to their nominations or primaries. Do a list of the women who ran for political elective positions and pick out women to be nominated for top-up to make sure that we realise the two-thirds threshold.

This will create an environment through which women will join competitive politics. It will prepare women and men of this country, so that by the time we are reaching our threshold of the 20 year sunset clause, everybody will be able to go to the playing field competitively and in a fair process, without any stumbling blocks for any one gender. This is a Bill which gives us an opportunity. Each one of us here might be a father of a daughter or a brother of a sister who is still young and has aspirations. I believe each one has certain aspirations for their daughter and would surely, want your daughter to have a better space to contribute to building this nation than our mothers had. If we have that aspiration for our daughters and sisters this is the ground that we are preparing in a legislative process to make sure that each one of us gets an opportunity without regard to gender, sex or any other discriminatory process to contribute equally.

We cannot belabor women leadership that we have seen all over the world. In Africa today, the world is decrying the fact that all presidents are setting a very terrible precedent. When their term of presidency comes to an end, we see a trend where they are unconstitutional going at every length to extend their presidency. Her Excellency Ellen Sirleaf is the first President to propose reduction of presidential term. This is just one example to show that given a chance, women are going to levels of unprecedented governance, democracy and good leadership.

Hon. Deputy Speaker: Hon. John Nakara.

Hon. Nakara: Thank you, Hon. Deputy Speaker, for allowing me a chance to contribute to this Bill. First of all, I want to congratulate the Leader of the Majority Party, for putting forward this Bill which will make history in the 11th Parliament.

One of the things I like about the Bill is that whoever is going to be appointed through affirmative action will only serve for two terms. That will leave space for other women to come to the limelight. Before, we used to only appoint one woman after every election, but this one

limits this to two terms. This will encourage many women to participate in leadership and after their term is over, they will go back and practise the skills and knowledge they have gained in Parliament. I support this Bill completely. It is not only a few women who are capable of making decisions or coming to this House.

Secondly, we are now living in a global village. Our women travel all over the world. It is very discouraging to see them being belittled because we are not supporting gender issues. With affirmative action, our women are respected and are part and parcel of the global revolution that is taking place. We want to encourage competition. Women, unlike men, are weaker in some areas like financial status, connections and networks, but when they compete and are defeated, we give them a second chance by nominating them to Parliament.

Empowering women to leadership positions is not a privilege, but a right. They are human beings, good leaders and very competitive. We need a country where women are respected, empowered and given opportunities to contribute their skills, knowledge and academic qualities to build the nation. Women who are knowledgeable, most of the time are committed to whatever they do and perform more than their counterparts.

Women contribute a lot to the community. The soft voice of women can attract many people to make a particular resolution or take a certain action in anything. I am supporting this Bill because when we have enough women in Parliament, we have equal opportunity to represent our people. Representation is not only for men. Even women can represent people. At the ground level, they interact with people, attend different occasions, meet other women and travel. They present all kinds of people, namely, the widows, single mothers, the married and everybody. There are some issues which men cannot handle eloquently and are best handled by women. Women work effectively with a lot of commitment because they understand the language of other women.

I support this Bill because it encourages competition and gives us an opportunity to be respected and recognised all over the world. Rwanda is respected because she has invested so much in her women. They have an equal number of male and female representatives in Parliament. That is why the economy of that country is growing. Women are not as corrupt as men. There are very few women who are corrupt. Majority of women are not corrupt. They are transparent and work hard to get their wealth. The few that are corrupt should not be used to judge women as corrupt.

With those few remarks, I support the Bill.

Hon. Deputy Speaker: Let us have Hon. Jakoyo Midiwo. You are the ones who passed the rules. The House leadership is given priority. I am not the one who decided.

Hon. Midiwo: Thank you, Hon. Deputy Speaker. I rise to contribute to this Bill. I would like to first of all thank Hon. Duale for attempting to bring back debate on this very weighty issue because it had been pushed to the back burner.

I love being consistent. This Bill does not have my vote. In the same strength, I support the two-thirds gender rule. I believe in it and I will always support it. I will feel very bad if I support a Bill that makes the membership of this Parliament indefinite and unpredictable in a country whose citizens struggle to put food on their tables. It is good to support a Bill, but many of us are not brave enough to call a spade a spade. I will support the Bill only when it is accompanied by provisions that reduce the number of politicians in this country. This country cannot afford us. It is the responsibility of this August House, the Executive and political parties to address this issue once and for all.

We have agreed to look at the socio-economic audit report. Having seen the draft, I know for a fact this is one of the issues raised in the report. It would be nice to deal with this issue in a more responsible manner. We cannot just have a certain number of Members of Parliament because we want to meet some principle without looking at how much it is going to cost us. A lot of the things in the current Constitution were conceived by activists and people in the civil society. We are now paying for it. Somebody must be bold enough to say that we cannot afford to pay for it. If I will be that person, so be it. I want to keep my friends, but if it means that I will lose them because of what I believe our country should be, so be it.

The principle of affirmative action cannot be a constitutional principle. It cannot be cured by constantly changing our Constitution. It is not just an issue. It is the responsibility of the male gender to bring up the female gender in our country. It is our responsibility to do it. We have agreed to do it. We must accept the responsibility. However, if it is costing us, we must agree to look for an alternative. In proportional representative systems in places like South Africa, it is easy to do. If you read the proposals in the Political Parties Bill, which is before the House, you will find that all these shenanigans have found their way into that Bill. It is a sure way of giving the women of Kenya lip service without talking about how to sort out this issue once and for all.

Leadership is not being provided with regard to this Bill. It has been tried. We have gone through this before. This Bill will fail on arrival because we fear biting the bullet. This Bill gives the possibility of a scenario where no woman is elected as a Member of Parliament except as a women's representative in the 47 counties, and then you want to nominate an additional 47 women. In other words, we want to increase the size of Parliament to 400. Jakoyo Midiwo will not be party to that. You will not have my vote to increase the number of Members in this House. I support the two-thirds gender rule, but I will not support this Bill. We are not being productive given our numbers. Article 90 of the Constitution, which we keep referring to, gives the county assemblies power to nominate busybodies to the assemblies and squander public funds. Take my county, for example, out of 30 elected ward representatives, there are 18 additional nominated women, which is not a third of 30.

Hon. (Ms.) T.G. Ali: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: There is a point of order from Hon. Tiyah Galgallo.

Hon. (Ms.) T.G. Ali: Thank you, Hon. Deputy Speaker. Is the Hon. Member in order to say that women who have been nominated to county assemblies are busybodies? That is an insult to the Kenyan women and to the Constitution of Kenya. We demand for his apology and withdrawal.

Hon. Midiwo: I will not withdraw. There are too many politicians in our country who are busybodies. They are not necessarily women. Even in this House.

(Loud consultations)

It will not help you. If you keep yelling, I will yell louder than you.

Hon. Deputy Speaker: Order! Hon. Jakoyo, we were getting on very well in our debate until you introduced the use of the word "busybodies" with respect to women.

Hon. Midiwo: I withdraw with so much apologies. There are too many idlers nominated to the county assemblies that this country cannot afford. That is the truth. There are too many people. Eighteen MCAs cannot be a third of 30. So, the formula in itself is wrong.

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Jakoyo! There is no need of making disparaging remarks about women or other Members. Please, restrict yourself to the point that you are trying to make. Your time is almost up. Use it wisely instead of raising temperatures in the House.

Hon. Midiwo: Having said that---

Hon. (Ms.) Mbarire: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Cecily Mbarire.

Hon. (Ms.) Mbarire: Hon. Deputy Speaker, with all due respect to Hon. Jakoyo Midiwo, a senior Member of this House, he has withdrawn the word “busybodies” but continues to use the word idlers. As women leaders, we do not take this kindly. He must withdraw and apologise. He needs to withdraw with some remorsefulness not just saying “I have withdrawn”, and then continue to use the word “idlers”. The women of this country are serious leaders. We are not idlers and busybodies. We take this with great exception especially from a person of his stature who holds a serious office on behalf of CORD. It is not even good for the female CORD members. They certainly do not like it.

Hon. Midiwo: Hon. Deputy Speaker, I withdraw the word “idler.” I would want to be told one day when people are reasoning, in the Senate, we have people who have been nominated to take up these quotas and the same law says that they cannot vote. If you want to change the meanings of English words, so be it. But we must look at these things, so that if you are Member of Parliament, the same way we have our lady colleagues here, you cannot do it in the Senate where they are nominated, but they cannot vote. So, what is the point? The country is spending on them. Let us get serious about this argument.

Now that they want me to say one or two more, when you are a Member of the National Assembly, people are equal.

Hon. Kombe: Withdraw!

Hon. Midiwo: I had already withdrawn. *Wewe wacha. Wee kwenda.* I have withdrawn. Did you know that the Executive, without prompting and initiation from this House, the budget-making House has given the so-called affirmative action seats money, vehicles, drivers and bodyguards? How is that affirmative action to other women? How does that help Alice Ng’ang’a? That is a fact!

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Order, Alice!

Hon. (Ms.) Nyasuna: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: There is a point of order from Gladys Wanga, Hon. Jakoyo.

Hon. (Ms.) Nyasuna: Thank you, Hon. Deputy Speaker. Hon. Jakoyo is my Minority Leader whom I respect. I agree with him many times, but today I do not. He has stated many times about vehicles and money. He has been misleading this House and in turn the nation that Women Representatives were bought vehicles and given money outside the law. I would like to clear the air and say that the vehicles that are in the counties for the Affirmative Action Fund are part of the Public Finance Management (PFM) regulations on the Affirmative Action Fund. These vehicles were not a favour from Madam Waiguru or the Executive. These are Government

vehicles. Just like the CDF has vehicles to help in running the CDF programmes, the same way affirmative action has vehicles to help in running affirmative action programmes.

Hon. Deputy Speaker: Your point has been made. I allowed you because it was supposed to be a point of order. Hon. Jakoyo, you are the one who invited it. She has clarified.

Hon. Member: Withdraw!

Hon. Deputy Speaker: He has already apologised and withdrawn that one. Hon. Jakoyo, can you just conclude without raising any more temperatures?

Hon. Midiwo: Hon. Deputy Speaker, it is very hard to help these people. I am on their side. Let me say here now that in the coming Budget, there will be no money. We do not have money in this country. With the money being misused in buying those vehicles, I will be proposing that amendment. Let me put myself on that. I will be talking about it in funerals and everywhere.

What needs to happen and I am happy the Leader of the Majority Party is here, is for us to discuss austerity measures for our country while we maintain the two-thirds principles, so that we can cut our coat according to our size as a country. It is said everywhere including the World Bank reports and the other socio-economic reports that the size of our political Government is too large.

So, you are not getting what you are asking for. I am telling you. You are not. I will not vote for any package that increases the size of political class. I will not because I do not believe in it. This is a debate. If you want where people are shouting, this will be a very good place to turn into a market, if you have not done so.

The good formula that works is one that used to work for us, namely, reduce the number of bodies or people in here, and then apply the one-third principle.

(Loud consultations)

I said bodies and not busybodies.

Hon. Deputy Speaker: Order! Your time is up.

Hon. Midiwo: I oppose.

Hon. Deputy Speaker: Go ahead, Peris. Jakoyo has finished his contribution.

Hon. (Ms.) Tobiko: Thank you, Hon. Deputy Speaker.

(Loud consultations)

Hon. Deputy Speaker Can we have some order? Order, Members! Allow Tobiko to make her contribution. Hon. Members, this is a debating Chamber. Hon. Midiwo has had his say. Allow Hon. Tobiko now to have her say.

Hon. (Ms.) Tobiko: Thank you, Hon. Deputy Speaker. Let me take this opportunity to thank the Leader of the Majority Party, Hon. Duale, for moving this Bill.

This is a great day in the history of the 11th Parliament and in the history of our country. Just before Hon. Jakoyo Midiwo started talking, the debate was going on very well. I am sure the Kenyan women were happy. I even wish you had allowed me to speak before him because he has spoilt the mood of the House. If it were not for the language that he has used, he had some very good points. Unfortunately, the language spoilt it all.

As I support this Bill, I want to agree with Hon. Jakoyo Midiwo that this House must address the issue of the size of the political class in the National Assembly, the Senate and the county assemblies.

It is crucial for us to think of Kenyans and the taxes they pay to maintain the political class. Hon. Midiwo had a point, but the way he brought it is wrong. This Bill tries to address some of these issues. This Bill is encouraging women to get into the political battlefield, but comes up with a top-up in case we do not make the two-thirds representation. The statistics by the IEBC showed that it is possible for the Kenyan women to make it through the ballot box. We are only looking for a way of encouraging them to come out and present themselves to the electorates and possibly, there will be no need of a top-up. This is the essence of this Bill. In our county assemblies, we should amend Article 177 of the Constitution to encourage women who will be nominated in county assemblies to first contest. I want to state that even in this House, we face discrimination. I had put my card in the intervention box very early, but you said you needed to give men an opportunity to speak and went ahead to allow Hon. Midiwo to spoil the debate.

Hon. Deputy Speaker: Hon. (Ms.) Tobiko, that was positive discrimination.

Hon. (Ms.) Tobiko: Hon. Deputy Speaker, you know that most of us made it to this House through very difficult circumstances and the whole country knows about it. We went through discrimination in very conservative patriarchal societies. With this Bill, Kenyan women will be given a chance to be voted in. In case they are not elected, such challenges will be addressed by a top-up. If we pass this Bill and encourage the county assemblies to follow through, we will reduce the burden on the taxpayers.

I support the inclusion of Kenyan women in leadership because there is no way this country can go forward without the voice of women. I would like to encourage Hon. Midiwo, a respected Member of this House and of the CORD Coalition, to support this Bill because women who got elected in their coalition were fewer because the coalition has not been treating women fairly during nominations.

Hon. Deputy Speaker: Hon. (Ms.) Peris, you are raising temperatures. Please, proceed to conclude.

Hon. (Ms.) Tobiko: Hon. Deputy Speaker, women like Ms. Rosa Buyu, would have been in this House if CORD was democratic. We have women like Ms. Rosa Buyu in Nyanza who would have made it were it not for the bad dictatorial policies.

I support.

Hon. Deputy Speaker: Hon. Peris, you are not getting any better than Hon. Jakoyo from your remarks. Hon. Mbadi.

Hon. Ng'ongo: Thank you, Hon. Deputy Speaker. First, when it comes to mainstreaming gender in our Constitution, you do not need to convince me twice. I support this Bill entirely and in its entirety. Even though the numbers of women Members in CORD, elected in single constituencies, are fewer, it does not mean that we do not believe in supporting women. The example given by Hon. (Ms.) Tobiko is one classical case of the ODM giving Ms. Rosa Buyu a ticket, but the voters of Kisumu West did not elect her. It is not that we did not give her support. We supported her as a party.

We should discuss this matter in a more sober way and escalate it to a higher debate. The Constitution talks about not more than two-thirds of either gender being of the same gender. We consciously voted for that in 2010. Women came out in large numbers to support the

Constitution because it recognised equity and equality in leadership. It is late that as a country, six years later, we are debating how to get the numbers we decided to give ourselves in the Constitution. Even before the courts pronounced that we should have numbers as prescribed in the Constitution, we should have done it.

We are even late because the same courts gave us up to August, last year to implement that. I am surprised to see this House still procrastinating and talking as if this is a matter we have a choice over. In other words, you are telling Kenyans that if we fail to pass this Bill by not garnering the two-thirds, then they should go to court and have this Parliament dissolved. If Parliament cannot live to the spirit of the Constitution, then we need to go home.

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Members! Let us listen to the Chairman of ODM.

Hon. Ng'ongo: I want to tell Kenyans that if you see a Member of CORD or ODM talking differently from the position of the party, then that is a personal decision. Some time back I shared with my party leader because I was concerned that he left Nairobi Hospital with a bandage on his head to go for a rally in Kisumu to support the Constitution. There are three pillars that my party leader believes in very strongly in this Constitution. The first one is devolution, which I know is key and close to his heart. The second one is the progressive Bill of Rights and the third one is affirmative action. I am sure he is disappointed if he hears any Member of ODM or CORD contributing like we are, against this principle. The ODM and CORD believe in supporting the two-thirds gender rule.

I have heard the debate about how expensive or otherwise this Parliament would be. In my view, this Parliament is already expensive. We are overrepresented as a country, but when it comes to women, then matters of cost become so pronounced. I do not understand why that is the case. The amount of money we lose in this country like through the National Youth Service (NYS) scandal, possible loss through the Eurobond and the Ministry of Health can be used to pay for the extra seats, if at all, extra seats will be created.

We need prudent financial management in this country. I do not think it is the question of overrepresentation or otherwise. Again, if we are genuine and honest with ourselves, if it is the question of cost, why do we not recommend that Members of Parliament in the next Parliament get a salary reduction, so that we accommodate more representation with a lower salary? We are not being honest and genuine with ourselves.

Hon. Jakoyo is my mentor in this Parliament. He used to do very well in the 10th Parliament. He really mentored me very well, but I do not know what has gone wrong. I have heard Hon. Jakoyo attack even the gender Affirmative Action Fund and the vehicles used. Even the male Members representing constituencies have bought vehicles using the CDF. They have been bought using public funds and the drivers are hired. So, I do not see why it becomes a problem when 47 women representatives have been given affirmative action money, which we voted in this Parliament. We passed rules and regulations. Instead of even thinking of how to add that money, many of my colleagues are fighting the same and yet I do not see my colleagues fighting the CDF. The affirmative action money is not for the 47 counties, but for the electorate. So, I just want fairness.

If all of us told our stories, many of us would have a lot to thank women for. If it is not your wife, it is your mother or daughter. For me, I know my mother is very happy in the grave

because I support this Bill. I support the Bill in respect of my mother who suffered so much to make sure that I went to school. The idea of looking at this Bill as if it is a women Bill is faulty. Many of us owe our existence in Parliament courtesy of women votes. As a matter of fact, in 2007, the old men in my constituency regarded me as a child who could not lead. However, women noticed that I had some very good qualities.

Majority of my supporters were women. I thank women for their good judgement because I am the first Member of Parliament to be re-elected. Those women were not wrong. Chances are that I am going to win a third term courtesy of women votes. I tell my colleagues, especially those from my coalition, that we are giving a very bad picture out there CORD and ODM are against this Bill. We are not. I repeat that there is no problem with this Bill. In fact, we need to top up. I do not support 20 years, but since it is in the Bill, I will support it. I wanted it to be left open until such a time that we feel we have realised this, as a country.

Lastly, we need to encourage women whom we have given capacity to occupy these positions. It is not very easy for a woman to win a parliamentary seat. For example, a woman born in Nyakach and married in Suba is completely new to that place. It will take her about 30 years to acquaint herself with the environment of that area. So, we should not attack these women thinking that they are weak. They are not weak. If you take me to go and contest a parliamentary seat in Gem, even if I live there for 10 years, they will still call me an outsider. So, let us support the women course in this country.

Hon. Deputy Speaker: Thank you. Hon. Alice Wahome.

Hon. (Ms.) Wahome: Thank you, Hon. Deputy Speaker, for giving me this opportunity to contribute. I will start where my colleague, Hon. Mbadi, has stopped.

Hon. Deputy Speaker, Hon. Mbadi needs to give me time.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Let us give time to each other.

Hon. (Ms.) Wahome: Hon. Deputy Speaker, I want to continue from where Hon. Mbadi left in terms of the fact that this Bill is in this House and the House has no choice. The Government has brought this Bill through the Leader of the Majority Party, Hon. Aden Duale. The Government, to that extent, has discharged a large part of its responsibility. Why do I say so? I say so because in 2012, an advisory opinion was sought by the Government. An order was issued that by 27th August 2015 we needed, as a House, to have come up with a Bill. Last year---

(Loud consultations)

Hon. Deputy Speaker, the House is completely hostile to the discussion. Hon. Gladys Wanga needs to give me time because I have a point here. I am saying that the Government has discharged part of its responsibility by bringing this Constitution of Kenya (Amendment) Bill.

Secondly, the courts, through two judgements, namely in the advisory opinion through Case No.182 and through an order by Justice Mumbi, said that this House must bring a Bill to implement Articles 27 and 81. Therefore, if for any reason this House fails to pass this Bill, we must know that it is incumbent upon this House or the duty is in our hands to support the affirmative action clause in Article 27 and Article 81 of our Constitution. The Articles are very clear that the debate is only here because we must debate. Therefore, male colleagues in this

House, save for Hon. Jakoyo Midiwo, have been very good and have supported the Bill. We want to encourage Hon. Jakoyo to come on board because every other speaker led by the Chairman of ODM, Hon. Mbadi, has given very firm support that the CORD Coalition is supporting the Bill. I want to remind Hon. Jakoyo that the manifesto that CORD sold during the elections supported 50 per cent women inclusion in the Government should they form the Government. I believe even this time round they will be moving around with a similar manifesto.

The URP and TNA, the Jubilee Coalition, did the same. Therefore, we are also going to look upon the same Members to whip support for this Bill, so that we do not debate in vain. Listening to the voices before me, it is clear we are moving towards the right direction.

Being elected in Kandara, I take this opportunity, once more to thank the people of Kandara. Among the 16 women, I was brought to this House by the people of Kandara. They refused to see marital and cultural barriers. They rejected patriarchy. I know that even come the next elections, they will do the same. Therefore, while the country is struggling to have women, Kandara has moved forward. I am looking at my colleagues. They have women in their houses and elsewhere. They have mothers. They have sisters and they have friends like us.

Hon. Deputy Speaker, as a country, it is time we realised that we cannot leave one team behind. President Obama came here and said that you do not expect to win when half of your team is outside the field. The Members who are opposing this Bill may not realise that the remaining chance is very little. We cannot go to the next general election without supporting this Bill. The issue of the size of the Chambers of Parliament cannot prevent us from implementing a decision that Kenyans made in 2010. You will recall that women came out in large numbers to support the Constitution. You know that the most faithful voter for our male colleagues and our political clout are women. They come out faithfully to vote. They do not have baggage or ask questions. They just need to believe. I know we are performing our duty by implementing Articles 27 and 81 of the Constitution.

In the first instance, it was a mistake that the drafters of Article 81 left out the implementation provision, which found its place in Article 177. That is why we have no problem in the county assemblies. In this House, somebody was still dragging their feet. Somebody did not believe that Kenyans have very clearly stated in the Constitution that we must have an adequate gender representation. We should be moving towards 50/50 gender balance.

The Constitution is very clear that one-third of a gender is the minimum we can have in the next Parliament. I am happy that Jakoyo Midiwo withdrew. I hope the women in his constituency did not hear him utter the word “idlers”. I am very sure even next time he will go to those same women to seek their support and vote. Failure to pass this Bill is failure to properly represent the women who brought us here. Hon. Gladys Wanga talked about promises. We promise to support this Bill. We shall come out in large numbers to seek elective positions in single member constituencies.

It is people like Hon. Jakoyo, Hon. Kaluma, Hon. Mbadi, Hon. Ababu Namwamba, Hon. Sakaja and Hon. Duale who can encourage CORD and Jubilee coalitions to ensure that more women vie for elective offices. Three women from CORD are insufficient. If we have 32 women in the next Parliament, we will increase that number by a top-up of about 30 Members to comply with the one-third gender rule. Thirty is a small number. We will not need to nominate 30 women if we bring 40 women to this House through the direct route.

Therefore, the voice of Hon. Jakoyo Midiwo alone will not stop the movement. We are on board. We had agreed to meet them outside the House, so that we can have a more candid conversation. I am very sure that he and others will be convinced.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Ababu Namwamba!

(Applause)

Hon. Ababu: Hon. Deputy Speaker, epochal moments that deserve to be inscribed with golden letters in the annals of history are normally moments like this one. This is a moment when this House is seized of a truly historic piece of legislation.

Before I get to this Bill, I am surprised that we are telling people to tone down and not to raise temperatures.

Hon. Deputy Speaker, this is the Chamber that provides a platform for the collective passion, fears, dreams and even insanity of the people of this nation. So, if there is one place that we must allow passions to boil and a clash of ideas, it is the Floor of this House. So, the senior Member for Gem is perfectly within his constitutional right and mandate to stand on the Floor of this House and take a position that is part of the debate that spices this debate.

Having said that, I am very proud to have co-chaired the Parliamentary Select Committee that negotiated the political deal that gave us this new constitutional dispensation. As we spent weeks on end in Naivasha negotiating and deliberating on the finer details of the letter and spirit of this Constitution, among the principles that we had no doubt about was the principle of gender equity in the leadership of this country.

For six years since August 2010, when the people of this country in overwhelming fashion promulgated and gave unto themselves this Constitution, we have procrastinated this matter of gender equity. We have circumlocuted this issue of gender and short-circuited the gender agenda. I say enough prevarication. Let us say “aye” to this Bill today.

(Applause)

Hon. Deputy Speaker, for our mothers, wives, daughters and Kenya, let us support this Bill. The greatest stumbling block to this Bill is the concern on numbers. We are concerned that we do not want to turn this Chamber into a high school. We do not want to be too many, so that we cannot fit in the lobby or in the dining hall. There is also the argument that it is too expensive. I want to tell this House, on the question of numbers, the necessity to reduce the size of representation in this country is a challenge we cannot run away from. This House ultimately will have to become seized of the matter of numbers in this House, the Senate and the county assemblies, but on that same note, that is a different debate and not related to this one in any way. We will not delay the actualisation of a constitutional principle because of our fear over numbers. Let us fix this one and then deal with the issue of numbers.

There is also the concern about cost. We are saying we are going to turn representation into an expensive affair. Hon. Members, who said democracy was cheap? In fact, if you think democracy is cheap, try tyranny and dictatorship. This country has tried the route of dictatorship, tyranny and exclusion. I want to tell this House that however expensive what we are attempting

to do here might be, it cannot surpass the laws occasioned by locking out 50 per cent of the population from leadership.

However expensive representation along this route maybe, it certainly cannot surpass the loss that is occasioned by locking out the passion, ingenuity, humility, dedication and the attention to detail that women bring to leadership. However expensive this venture may ultimately be, it cannot surpass the nobility and the imperative of correcting centuries of exclusion and subjugation that literally turned women into spectators in matters of leadership. Therefore, let us put aside those fears and declare our fidelity to our new constitutional order and breathe life into the principle of gender equity.

Let me also add my voice to the position already so lucidly articulated by my very able party Chairman, Member for Suba, Hon. Mbadi, that the official position of ODM, the party for which I speak as the Secretary-General, is to support without equivocation or prevarication this Bill in totality. We support this Bill because we believe in the Constitution of this Republic. We support this Bill because we believe in the contribution of the women and all the citizens of this land.

Hon. Deputy Speaker, any other view that you may hear coming from your left hand side of this Chamber is personal and fortunately, it is in a very tiny minority. The vast majority of the membership of the ODM and CORD support this Bill.

When you look at the structure of ODM, you see respect for women and fidelity to the principle of gender inclusivity. Right from our National Executive Committee all the way to our grassroots structures, we implement the two-thirds gender rule with strict adherence only comparable to the practice of religion. So, let there not be any misconception that this great party, the country's biggest and swankiest party south of the Sahara, North of the Limpopo, has any doubts whatsoever on the support for this Bill. Our party leader, the irrepressible, Hon. Raila Amolo Odinga, said "Let us say 'aye' to this Bill."

(Applause)

We say "aye" and join the women of this country. We applaud the women leaders in this Chamber, who have been at the forefront of fighting to first of all get this principle into the Constitution and to work out the formula that provides this platform for us to debate this matter today. I applaud all of you across the political divide and wish you a happy return to this Chamber, so that you can witness and enjoy the fruits of your labour.

With those few remarks, I support the Bill.

Hon. Deputy Speaker: Hon. Tiyah Galgalo!

Hon. (Ms.) T.G. Ali: Thank you, Hon. Deputy Speaker. I stand to support this Bill. Let me take this opportunity to thank the Leader of the Majority Party for setting the pace in supporting this Bill. Let me also thank our male Members of Parliament who supported this Bill. We will go into history, as a House, for supporting women course.

Allow me to say that we have a community governance structure that is not friendly to women.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! There is a Member on the Floor, allow her to make her contribution.

Hon. (Ms.) T.G. Ali: Thank you, Hon. Deputy Speaker for protecting me. We have a community governance structure that is not very friendly and has no space for women. If we do not pass this Bill, we will have a group of able women with aspirations and visions who may not come to this House.

As I speak, we have a community governance structure that is in conflict with the Constitution. Many patriarchal communities like the one I come from do not allow women in leadership. They demean women. As I grew up in my community, the northern communities of Kenya believed that women are children with big feet. They will not, at any one time, allow women to make decisions. This is also a Muslim community where men marry up to four wives to manage their property and homes yet they call them children with big feet.

As we pass this Bill, we are looking at this kind of culture that is not favourable to women. Affirmative action is not very cheap and easy for women. As one of the 47 women representatives in this country, I went out there to campaign against very strong men who wanted to have a weak woman with them. I spent money and crisscrossed very vast areas and a lot of energy to get an affirmative action position. Women are patient and strong even under very difficult circumstances. If they are given opportunity through affirmative action to participate in elections, they will always thank you.

Women have a lot of capacity and can take leadership positions, but are left out because of lack of money. This Bill will allow women to seek elective posts through all other processes. Women will go for these positions from the constituency, governorship and even as Senators. This Bill will enable women to have an alternative of top-up in terms of affirmative action. We are talking about the numbers in the House and the need to reduce them, we will not reduce the two-thirds gender principle. We can have a House of 10 Members, but we will still demand for the two-thirds gender rule. It is a right given to women by the Constitution, which we all promulgated unanimously.

We have been working very hard to support men, so it is high time we are given our right. Women should be given what belongs to them. We are not demanding or competing with anybody. We are not undermining the male leadership, but we are only asking for inclusion, participation and space. We passed the two-thirds gender principle in the Constitution. We are not taking over seats that belong to men, but we are only asking for space which is given to women by the women.

I support.

Hon. Deputy Speaker: Hon. Waiganjo.

Hon. Waiganjo: Thank you, Hon. Deputy Speaker for giving me this opportunity to support the Constitution of Kenya (Amendment) Bill.

The class or section of people we are talking about, namely, our women, are facing serious challenges. Bringing them to the mainstream leadership will assist them overcome some of the challenges they face. They are victims of female genital mutilation, which is a serious problem in this country. They are also victims of early forced marriages. Our girls are forced to marry at very tender age. They also suffer premature or unwanted pregnancies, as it were, and consequently, most probably, abort under very serious circumstances. They are victims of cultures that are repugnant to morality and justice. It is only fair that we now put them into

perspective. By getting them into leadership positions, they are able to address some of the problems they face.

They suffer the vagaries of contraceptives and domestic violence. Therefore, this is a class of people that we must support. They do not inherit property because most of our cultures do not allow them to inherit. They undergo rape and defilement. There are families that live through defilement because when you force a young girl aged below 17 years to marry, you have subjected that girl to a life of crime and defilement.

Responding to Article 81(b) of the Constitution on the two-thirds gender rule is the most important thing for us to do at this particular point in time. Article 27 of the Constitution calls for the implementation of this principle by this Parliament. We have very little choice because the Supreme Court has already expressed itself on this issue after the Attorney-General sought its opinion. This Bill must be enacted on or before August this year. We are responding to a constitutional dictate and have very little choice.

In our Constitution, international obligations are domesticated. Declarations like the Beijing Declaration and the African Union declarations are key. We must obey the law and do what we are required. This Bill is not necessarily for women. It is gender mutual. We are looking forward to a time when we will have equal representation in the Council of Governors. I am happy to note that the Deputy Speaker is running for the position of governor. The Council of Governors is a body that is required to respect the two-thirds gender rule. Moving forward, we are going to have more inclusiveness.

I can see Hon. Sabina Chege looking at me and asking me to expedite. I will donate my remaining time to her. Interestingly, I have heard the Chairman and the Secretary-General of ODM more or less condemn the Deputy Leader of the Minority Party. I want them to de-whip him from being a Minority Leader, so that he can also be an example to other Members that they have already de-whipped from Committees.

I support the Bill.

Hon. Deputy Speaker: Hon. Sabina, you are taking his time. You have your own arrangement. You will have one minute before we adjourn.

Hon. (Ms.) S. W. Chege: So, can I continue after this?

Hon. Deputy Speaker: Yes.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Deputy Speaker. I hope I can still continue tomorrow. I support the Bill. I applaud the men who have stood up and supported this Bill. It is good to note that a lot of the people who wake up early in the morning to vote are women. This is a special gift that we have given to the women of this country.

When we talk about the issue of gender, I foresee in 20 years to come, we might have men asking us to support them. We will give back. I also appreciate that we are making a way not only for ourselves, but also for our sisters and daughters who might join this House when we leave.

The issue of numbers has come up and how expensive this process can be. However, I want to challenge the political parties. If political parties sincerely do not want Kenyans to go to an extent of having more women or huge numbers in this House, they should come out and support women through financing and protecting them when they go for elective seats.

Hon. Deputy Speaker: You will have a balance of nine minutes when this debate resumes. She was the next one on the queue.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, the time now being 6.30 p.m., this House stands adjourned until Wednesday, 23rd March 2016 at 9.30 a.m.

The House rose at 6.30 p.m.